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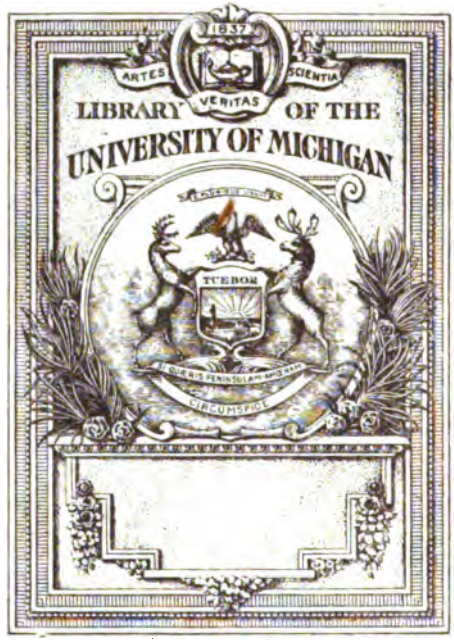
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THE TRUST PROBLEM

BY

JEREMIAH WHIPPLE JENKS, Ph.D., LL.D.

RESEARCH PROFESSOR OF GOVERNMENT AND BUSINESS, NEW YORK UNIVERSITY;
FORMER EXPERT AGENT OF THE UNITED STATES INDUSTRIAL COMMISSION;
MEMBER UNITED STATES IMMIGRATION COMMISSION; MEMBER
UNITED STATES COMMISSION ON FOREIGN EXCHANGE, ETC.

Fourth Edition, Enlarged and Completely Revised

WITH THE COLLABORATION OF

WALTER E. CLARK, Ph.D.

PROFESSOR OF ECONOMICS, COLLEGE OF THE CITY OF NEW YORK

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To

G. B. J.

KEENEST, ABLEST, KINDEST CRITIC

PREFACE TO FOURTH EDITION

THIS edition of the Trust Problem is much more than merely a reprint of the old edition. It is practically a new book.

Some new chapters have been added. Chapter 1 on the Evolution of Business, the very large additions made to Chapter 9 on Prices, Chapter 10 on Trusts and the Working Man, with the new facts that they contain, aid materially in the discussion of the economic principles involved. Chapter 12 on Industrial Combinations in Europe gives us a basis of wide experience. The new chapters on State and Federal Trust Legislation in the United States, and the one on Trusts and the Federal Court, showing the development of legislation during the last few years, likewise serve to strengthen the economic foundation of the discussions, since the course of legislation has, to a considerable degree, clearly been based upon the principles brought out in the theoretical discussions.

In any book that is to serve as a text book it is desirable to furnish material as a basis for original study and judgment on the part of the student. The same material is desirable for business men and scholars who wish to be certain of the facts on which they are to base their judgment in business matters. In consequence, it has been thought best in the appendices to include much new material. Appendices A, B, and C

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show remedies for the evils of industrial combinations that have been proposed by those who have given very careful study to the subject. Appendix D, in giving outline histories of representative industrial combinations, shows, not only economic results springing from these great business organizations, but also the influence of Governmental action upon them. In the succeeding appendices are given in sufficient detail the laws of the United States and foreign countries, so that the reader can make a reasonably accurate comparison of the attitude toward these combinations of various Governments under different economic conditions.

It is believed that enough of this material has been given to form the basis for an excellent course for any group of university students without going outside of the volume itself. Although, of course, the advantage of wide reading in the libraries is not to be overlooked.

The history of the years since the publication of the preceding edition, though fruitful in experience and in legislation, shows no need of change in the judgment of fundamental principles. Slight changes in emphasis may be noted. The degree of monopoly power that can be exercised by the capitalistic combinations, for example, is apparently somewhat less than we earlier thought, while the regulative power of competition and of public opinion is somewhat more.

New York, July, 1917.

THE TRUST PROBLEM

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THE TRUST PROBLEM

THE TRUST PROBLEM

INTRODUCTION

THE studies upon which this work is based began some thirty years ago when the writer of the first edition in looking over the field of future economic development of the United States, reached the conclusion that the question of the trusts was likely to be one of the two most prominent subjects of legislation in the near future. It was thought best to make the study as practical as possible, chiefly from personal investigation of large corporations through contact with their officers and workmen, their opponents, and dealers in their goods, and also from such printed statistical data as seemed to be trustworthy. In following out this plan, the first study, owing to the personal connections of the writer, was on the organization and work of the Michigan Salt Association, March (1888). This was followed in 1889 by a brief history of the Whiskey Trust in the days when it still remained a trust in its legal form of organization. These two studies, especially the latter, indicated so clearly many of the advantages and at the same time the dangers to the public of these great combinations of capital, that it became possible to draw some general conclusions. A few years later, in 1894, a further study along the same lines, including the organization of the Standard Oil Company and of the

American Sugar Refining Company so clearly indicated the causes of the organization of these combinations and many of their effects that the writer ventured to draw general conclusions regarding the economic effects of great industrial combinations, and to indicate briefly the probable nature of legislation that would be needed to place proper restraints upon their action while at the same time preserving the advantages coming from their organization. It has been gratifying to note that the facts gathered were so typical in their nature that the judgments based upon them have been largely vindicated by the course of the latest legislation and the most recent court decisions.

Aside from the general literature on the subject and various personal studies made by both authors of this edition, the chief opportunities for collecting material have been in the investigation carried on by the United States Industrial Commission during the years 1899-1901 and in later studies made in 1913-1915 in connection with the cases of the United States against the International Harvester Company, and the United States Steel Corporation and two or three minor cases. Especially in the case of the United States Steel Corporation, opportunity was afforded for a most thorough study of data accumulated by both the Government and the Corporation at great expense and with the greatest care, together with the testimony presented on both sides. It is probable that nowhere else can be found so valuable a collection of material covering the entire range of business activities of one of the great combinations. Although all these valuable materials have been freely at the disposition of the authors it

should be understood that they only are responsible for the opinions herein expressed. It has been the intention to present mainly facts and the judgments of others who from their intimate connection with the corporations under discussion, either as members, rivals or otherwise, are thoroughly conversant with the facts regarding them.

The book is intended to be a brief compendium of industrial conditions, so far as they particularly affect industrial combinations or are affected by them, together with some opinions regarding the influences which have brought about present conditions, and an attempt to draw from the data furnished certain conclusions regarding the economic factors involved and their working, which may possibly be helpful in connection with legislation, and with the administration of the combinations. This study is not intended primarily for the student of economic theory. As a brief impartial statement of facts and principles, it is hoped that it will prove useful to the many busy men who have not the leisure needed to gather the material, but who, wishing to do their duty as citizens intelligently, will welcome a brief compendium which may to a certain degree serve them as a basis for judgment. And yet it is thought that the studies connected herewith will be useful to students. They seem to have marked some brief steps in economic theory and method. So far as the writers are aware the term "capitalistic monopoly" was first used to characterize the trusts in the author's article of 1894.* This conception of a qualified monopoly maintained within rather narrow limits

*Political Science Quarterly, September, 1894.

by sheer force of large capital was attacked by a few economists but, speaking generally, it has been accepted by both economists and business men and within the limitations suggested in this volume it stands.

Again, in the history of the Whiskey Trust,* was first employed the system of measuring the effects of the industrial combinations upon prices by indicating month by month the margin between the cost of the raw materials involved and the selling price of the finished product, a system that has since been followed in numerous other studies, both by the United States Government, and many individual writers. This has proved to be the most effective method of showing clearly the course of prices and of exposing many of the fallacious conclusions drawn from merely grouping over a series of years prices of the finished products or by using groupings of selected years of the marginal differences, methods that were formerly frequently employed and that led many sincere writers to false conclusions.

Another advance in showing accurately the effects of the combinations upon prices, was made in the Steel Corporation case by comparing the course of prices of steel in this country and abroad with the course of prices of general commodities as indicated by index numbers. The advantages of this method together with its limitations are explained in Chapter VIII on Prices.

The presentation of the business facts, not only in the earlier editions of this work but even in some of the preliminary studies,† seemed to indicate clearly the

*Political Science Quarterly, June, 1889.

†Political Science Quarterly, Vol. IX, No. 3. 1894.

sound business policy that it would be wise for the managers of the great industrial combinations to follow in order to insure permanent success in distinction from immediate large profits, speculative in their nature, which were likely to be followed by disastrous competition and enormous losses. These conclusions, based on experience and economic principles, were afterward presented independently before the United States Industrial Commission by various practical business managers of the great corporations, especially by Judge E. H. Gary, at that time President of the Federal Steel Company and since then Chairman of the Board of Directors of the United States Steel Corporation. The most striking vindication of this policy advocated and followed by these business men has been found in the decisions of the courts in the cases against the International Harvester Company and the United States Steel Corporation, together with the decisions of the Supreme Court of the United States in the Standard Oil and Tobacco cases. In these cases the courts, in laying down the principles on which their decisions have been based, have finally adopted as their "rule of reason" these business principles; and their decisions, whether for or against the corporations in the individual cases, have turned upon their application of these principles to the facts as proved.

Considering the nature and purpose of this book, it has not been thought best to cite authorities for many of the statements made. Whenever they are taken from the testimony before the United States Industrial Commission, Doctor Durand's admirable index to that report will be available to all who care to verify the

citations. In many cases, however, information given has been confidential in its nature, though on that account no less trustworthy. Such information has dealt at times with practices that in some way have come under public condemnation, such as promoters' rewards, freight discriminations, commissions to bank officers, and stock speculations. In other instances it has concerned the business of special combinations, and has formed the basis for judgments when the facts themselves were matters of only private concern.

The appendices contain some data and documents which may prove helpful in enabling readers to make more definite and specific their judgments as to business principles independently of the conclusions of the authors and to clarify their own ideas regarding new legislation or court decisions. The admirable summary of conclusions made by Judge Howe, the permanent Chairman of the Chicago Conference on Trusts, regarding certain suggested methods for the solution of the Trust problem, is a noteworthy document, presenting what were in effect the opinions which could be agreed upon as long ago as 1900 by substantially all the membership of that great conference, representing so many conflicting views and interests. Time has vindicated their judgments. The Report of the United States Industrial Commission is a most carefully considered expression of opinion and recommendations by a non-partisan body of men, made after an investigation extending over three years. Though it does not claim to be final, nevertheless it was the result of most careful study and deliberation, and is

entitled to the prominent position which has been given it by thinking men of all classes.

The proposed New York Business Companies' Act, 1900, drafted to carry out the suggestions made in Governor Roosevelt's message regarding Trust legislation, is the one formulation into a definite bill of the opinions of many persons who have thought it possible to separate sharply between the good and evil arising from the modern organizations of capital, and who are ready to encourage the good while checking the tendencies toward evil, chiefly through compelling the corporations to carry on their operations much more under the public eye than at present. While in its preparation the author was assisted by several lawyers and business men, he took alone the responsibility of determining just what the bill should contain, and has, therefore, in condensing part of it and in determining what portions of it should be printed in full, felt at liberty to make some slight modifications in the bill as reported by the Judiciary Committee of the New York Senate. Although this bill did not become law, it still stands as a type of legislation on corporation organization and management toward which we should work; and the trend of legislation in many of our states and in Congress is clearly in the direction indicated in this bill. The experience of foreign countries in this field, as shown in the chapters on foreign combinations and in Appendices giving the main provisions of the laws of Great

nd Germany, prove how significant publicity

control are considered in those countries.

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the word "Trust," as expressed in the title, are included especially those organizations of capital which have been called "capitalistic monopolies." Neither railroads nor telegraphs nor other public service corporations are especially considered; but, in general, Trusts are taken to mean manufacturing corporations with so great capital and power that they are at least thought by the public to have become a menace to their welfare, and to have, temporarily at least, considerable monopolistic power.

An effort has been made to explain these Trusts, and not to rest content with calling them the product of evolution, and assuming that, therefore, they are both inevitable and in the long run helpful rather than harmful. In a letter written but a few days before his death, Gen. Francis A. Walker, commenting upon this fatalistic attitude of some of his friends who were satisfied to call Trusts the product of evolution, remarked that he supposed the modern train robber was merely a normal development of the old-fashioned, commonplace highwayman, and continued: "Some evolution is worthy of only condemnation; some evolutionists ought to be hanged." With that view of economic evolution, as something requiring further explanation before being either approved or condemned, the book has been written. But it is also believed that sufficient data have now been accumulated and experience has been long enough so that in this edition positive conclusions can be reached regarding the economic principles that apply and regarding legislation that is probably wise. The authors have, therefore, written with more conviction on many phases of the problem than in earlier editions.

The first two or three chapters, which discuss the modern business conditions leading to the formation of combinations, necessarily show their favorable side and the evils of the competitive system most strongly; later chapters, depicting their methods of work and their effects, show most clearly the evil in them.

It is hoped that the prejudices which are common to all have not prevented a reasonable degree of fairness in seeing and depicting both sides of this question, the good as well as the evil. While it is probable that the book has been written chiefly from the viewpoint of the economist, it has been the intention not to ignore that of the publicist and of the citizen, who think of the practical as well as the desirable in legislation, and who keep in mind the social and moral as well as the business welfare of the people.

CHAPTER I

THE EVOLUTION OF BUSINESS

THIS is a factory-made age. Its leading tendency is toward concentration and the power-driven machinery of the factory best accounts for this tendency.

That concentration is characteristic of modern life is in evidence:

1. In the widening of national sovereignties. Since 1750 three great world empires have been built and the land area of the whole world has been gravitating toward control by a few nations. The present war seems likely to strengthen this movement while changing its method.

2. In the growth of national wealth. By official estimate the wealth of the United States, exclusive of Alaska and the island possessions, grew from seven billion dollars in 1850 to one hundred and eighty-seven billion dollars in 1912.

3. In the growth of national populations. The new world populations have grown almost magically. The population of the United States multiplied by twenty-three between 1790 and 1910, and that of Canada has increased twenty-nine times since 1800. Even among the nations of Europe population increase has been notable since the factory came. The populations of England and of Russia have multiplied by four in the past hundred years. The population of the coun-

try included in the German Empire at the beginning of the war had increased nearly five-fold in less than a century.

4. In the growth of cities. Some of the western nations have become practically urban and all of them tend that way. The United States, young among the nations and of large area, had only about three per cent. of its population urban in 1800, whereas the census for 1909 records more than forty-six per cent. of the population as urban and five of the states as being more than seventy-five per cent. urban.

5. Among wage earners. In 1800 they were competing individuals. To-day, though still competing, they are massed in effectively organized armies, millions under each of several banners.

6. In the world of capital control. In the middle of the eighteenth century capital was scattered in hand tools and in village shops. To-day mechanized industries have combined and integrated until the concentrated capital of single business enterprises surpasses the whole wealth of most kingdoms prior to 1750.

All these phases of the modern world's concentration have come from the great industrial inventions of the eighteenth century.

Inventors and discoverers have always played leading rôles in the drama of human evolution. Eric and his hardy crew futilely attempted to establish colonies on this Western continent some six centuries before any permanent colony was established. Those six centuries gave Europeans movable type, the compass, and gunpowder. Many seventeenth century colonists were induced to undertake their journey and were sustained during pioneering hardships by the prospect

of worshipping according to their interpretation of the Book. Their voyage was lined by the compass and by means of it supplies and recruiting bands could reach them. Once landed, their deadlier weapons prevailed over the hostile natives. Thus permanent colonization of the new world, impossible in the days of bold Eric the Red, was actually accomplished after three great inventions had equipped man with needful means of communication, of better sea travel and of conquest over even valiant savages.

Just as these three inventions were fundamentally important in evolving modern from medieval life, so the series of eighteenth century inventions which gave us power-driven machinery made their fundamental contributions. The factories they made possible largely increased production and therefore rapidly increased the wealth of nations. These factories compelled many workers to live near them and industrial cities grew. These industrial cities produced factory-made goods in high surplus above their own needs for such goods. To provide raw materials for these factories and food for the workers, and to dispose of the surplus factory products, nations developed transportation by land and by sea, searched for foreign markets and established new colonies. The widening of national sovereignties resulted. Both the rapid increase of national wealth and the establishment of new colonies stimulated the increase of population. The wage earners in the growing industrial cities were called to their work and were freed from it at common times. Associating in large numbers all day at their work, coming and going in groups, they talked of the growing

difficulties which prevented wage earners from rising, of their low wages, and of the hard conditions under which they worked. They sensed the power lodged in their numbers and the necessity of organization before they could use such power to their advantage. A century of organizing efforts, at first haphazard, weak, and commonly condemned by the general public, have culminated in such permanent, effective and generally approved national organizations as the American Federation of Labor, with its 2,000,000 members. So the factory, the concrete embodiment of new industrial inventions, stimulated rapid growth and steady centralization throughout the industrial, the political and the social life of the whole western world.

To complete the background for a study of Trusts it is needful that the rapid growth and the steady centralization, since 1800, of productive power in representative manufacturing plants be set forth in some detail. Facts of official public record in the United States prove such growth and such centralization during the past century beyond any reasonable doubt.

Concentration has occurred in leading lines of United States manufactures steadily since 1800. The census data on manufactures prior to 1850 are unsatisfactory. That there was industrial concentration within the United States from 1800 to 1850 is, however, a fair inference from the facts that there were practically no factories at all in 1800 and very few in 1810 and in 1820, whereas the census figures for 1850 show sizable average plants in a number of important manufacturing lines. Industrial concentration in the United States since 1850 is clearly demonstrated by the census

returns. The notable and steady growth of the *average plant*, in leading lines of manufacture, is shown by listing its amount of capital, its number of employees, and its value of output, decade by decade.

It seems unnecessary to give tables for all of the thirteen industries for which data are given from 1850.* Tables covering three of them, as compiled from the Twelfth and Thirteenth Censuses, are given as fair illustrations of the steady concentration shown in all the thirteen leading industrial lines:

INCREASING SIZE OF U. S. MANUFACTURING PLANTS 1850 TO 1910

INDUSTRIES	YEAR	NUMBER OF ESTABLISHMENTS	AVERAGE PER ESTABLISHMENT		
			CAPITAL	NUMBER OF WAGE EARNERS	VALUE OF PRODUCTS
Agricultural Implements	1910	640	$ 400,439	79	$ 228,689
	1900	715	220,571	65	141,549
	1890	910	159,686	43	89,310
	1880	1943	31,966	20	35,327
	1870	2076	16,780	12	25,080
	1860	2116	6,553	8	9,845
	1850	1333	2,674	5	5,133
Cotton Goods	1910	1324	$ 621,025	236	$ 474,616
	1900	1055	442,882	237	321,517
	1890	905	391,183	242	296,112
	1880	1005	218,412	185	209,901
	1870	956	147,182	142	185,659
	1860	1091	90,362	112	106,033
	1850	1094	68,100	84	56,553
Iron and Steel	1910	654	$2,281,828	426	$2,105,737
	1900	668	858,371	333	1,203,545
	1890	699	591,085	250	683,124
	1880	699	294,692	197	418,583
	1870	726	161,523	103	274,878
	1860	542	82,283	65	97,341
	1850	468	46,716	53	43,650

*See Twelfth Census, Vol. VII, p. lxxii, and Thirteenth Census, Vols. VIII and X, see Indexes. The thirteen industries are Agricultural Implements, Carpets and Rugs, Cotton Goods, Glass, Hosiery and Knit Goods, Iron and Steel, Leather, Malt Liquors, Paper and Wood Pulp, Shipbuilding, Silk and Silk Goods, Slaughtering and Meat Packing, and Woolen Goods.

These tables show, decade by decade, the steady increase in the capital, the number of wage earners and the value of the output of the average plant in each of these three lines of manufacture. During the sixty years the capital of the average agricultural implement plant is shown to have multiplied by a hundred and fifty, the greatest average capital increase shown in any of the thirteen manufacturing industries considered. Average capital multiplied more than nine times in the cotton goods industry and almost forty-nine times in the iron and steel industry. The number of wage earners in the average plant increased in the agricultural implement industry almost sixteen times, in the cotton goods industry almost three and one-half times and in the iron and steel industry more than eight times. The gross value of the output of finished goods of the average plant is shown to have increased nearly forty-five times in the agricultural implement industry, almost eight and a half times in the cotton goods industry and more than forty-eight times in the iron and steel industry.

A calculation of the flat averages of the returns from all the leading industrial lines for which figures are given since 1850, gives almost startling demonstration of industrial concentration in the United States during the past two generations. *Such a calculation shows that in thirteen leading lines of industry in the United States, the average manufacturing plant, in the sixty years from* 1850 *to* 1910, *multiplied its capital by more than thirty-nine, its number of wage earners by nearly seven and the value of its output by more than nineteen.*

Notable as are these figures, the returns are perhaps

still more impressive when the reader turns from a consideration of the growth of the *average plant to note the culminating preponderance of the large plant in the whole range of present manufacturing in the United States.* The period from 1840 to 1860 is sometimes referred to as the *golden age of small industries* because at that time manufacturing generally was carried on throughout the United States by small plants. The last census has made a study showing the recent relative importance of large manufacturing plants. Greater numbers of small plants exist than ever before, but the relatively small number of large plants is putting out a steadily increasing proportion of the country's whole manufactured output. In 1909 the number of plants whose average value of products was above $100,000 a year, was only 11.5 per cent. of all the listed manufacturing establishments of the country, but this 11.5 per cent. of the whole number of plants is accredited with 82.2 per cent. of whole value of manufactured products. Again, plants whose output was valued above $1,000,000 each, made up only one and one-tenth per cent. of the whole number of manufacturing establishments, but this little more than one per cent. of the whole number accounted for nearly forty-four per cent. of the whole output value. Census figures for this phase of the study cover only the years 1904 and 1909. The table below gives the summarized figures for these two years and is submitted as a demonstration that the United States is now in a *golden age of large manufacturing industries:*

SIZE OF MANUFACTURING INDUSTRIES IN THE UNITED STATES*

ANNUAL VALUE OF PRODUCTS	ESTABLISHMENTS		WAGE EARNERS		PRODUCTS	
	NUMBER	% OF TOTAL	AVERAGE NUMBER	% OF TOTAL	VALUE	% OF TOTAL
All Classes						
1909	268,491	100	6,615,046	100	$20,672,051,870	100
1904	216,180	100	5,468,383	100	14,793,902,563	100
Less than $5,000						
1909	93,349	34.8	142,430	2.2	222,463,847	1.1
1904	71,147	32.9	106,353	1.9	176,128,212	1.2
$5,000 to $20,000						
1909	86,988	32.4	470,006	7.1	904,645,664	4.4
1904	72,791	33.7	419,466	7.7	751,047,759	5.1
$20,000 to $100,000						
1909	57,270	21.3	1,090,449	16.5	2,544,426,711	12.3
1904	48,096	22.2	1,027,047	18.8	2,129,257,883	14.4
$100,000 to $1,000,000						
1909	27,824	10.4	2,896,532	43.8	7,946,935,255	38.4
1904	22,246	10.3	2,515,064	46.	6,109,012,538	41.3
$1,000,000 and over						
1909	3,060	1.1	2,015,629	30.5	9,053,580,393	43.8
1904	1,900	.9	1,400,453	25.6	5,628,456,171	38.

*Selected and rearranged from table given in U. S. Census 1910, Vol. VIII, p. 180.

The steady growth of big business in the United States world of manufactures is notably recorded in the above table, which shows the development for the short period from 1904 to 1909. Million dollar output plants producing thirty-eight per cent. of the country's output in 1904 were producing nearly forty-four per cent. in 1909. If this same swift rate of change has been maintained since 1909, huge million dollar output plants are to-day producing more than half the value output of the manufactured goods of this nation.

This high development of large scale production is still further in evidence when particular lines of manufacturing are noted in the 1909 record.* Eighty-six lines of industry are listed as leading industries on the

*The following facts are taken from the 1910 U. S. Census, Vol. VIII, p. 182.

ground that they each employed more than ten thousand wage earners throughout the United States. Twenty-seven of these eighty-six leading industries reported that more than half of their total product value was produced in plants producing each above $1,000,000 worth of products annually. Such plants in copper smelting and refining produced 99 per cent. of the national output, in rubber boots and shoes, 92.2 per cent., in iron and steel rolling mills, 91 per cent. and in petroleum refining 88 per cent. The exact records of $1,000,000 output plants in the remaining twenty-three leading industries, showing this especial concentration of capital range from 51.3 per cent. for shipbuilding, 51.8 per cent. for silver ware and silver plated ware and 52. 9 per cent. for cotton goods, up to 80.7 for railroad cars, 82.2 per cent. for wire, and 85.8 per cent. each for iron and steel blast furnaces and for slaughtering and meat-packing. Such figures demonstrate that big business is the ruling type to-day in United States manufacturing.

Steady centralization of capital, steady evolution of larger and always larger scale production, has been an important aspect of the industrial story of the United States for more than a hundred years. This steady centralization had gone on for three quarters of a century before the first Trust was formed. The whole Trust movement seems to be possibly the most important, certainly the most striking phase of this apparently natural, impersonal, inevitable centralization, resistlessly impelled by man's search for the most economical means of production. Given the factory as a main proposition in the book of modern indus-

trial evolution and the Trust is but a hundred year corollary.

The facts set forth in this chapter show:

1. That a wide centralizing movement has been proceeding during the past century and a half in which human society has been adapting itself to its environment as modified by the coming of the factory.

2. That a detail of this wide centralizing movement has been a steady increase, throughout the past century, in the capital, the number of employees and the value of the annual output of the representative manufacturing plant in leading lines of industry.

These same facts suggest that the Trust movement is but a recent stage of this century old tendency to increase the size of manufacturing units and that the Trust is therefore a normal product of the industrial evolution consequent upon the use of modern power-driven machinery.

The chief aim of business organization, on its productive side, is that it shall get given results with less and less expenditure of human effort. This endless search for means to cheapen cost of production was best illustrated by the inventions of such men as Watt, Hargreaves, Arkwright, Crompton, Cartwright, Whitney, Fulton and Stephenson in the century following 1750. The capital of the typical manufacturing plant has been steadily increased since 1800 in this same endeavor to cheapen the cost of production. The industrial combination which brings many large scale manufacturing plants under one control, the combination which we have nicknamed The Trust, may be but a recently discovered means of further cheapening

the cost of production. If a careful analysis of the facts of Trust production should show that Trusts are cheapeners of cost, then the *suggestion* of this chapter that Trusts are entirely normal products of industrial evolution will have become a *demonstration.* Such a proof would be a demonstration not only that Trusts are a normal product of evolution, but that unless more than counterbalancing evils necessarily result from them, they are a *desirable* product, which is far more important, for only careless optimism assumes that all normal products of evolution are desirable. The third chapter will examine the claim that Trusts are a means to lessen the cost of production.

CHAPTER II

COMPETITION: ITS NATURE

IT IS impossible to understand why there has been so strong a tendency toward the formation of industrial combinations, unless one first sees clearly the economic conditions out of which they have arisen. A brief study of the competitive system is therefore placed in the foreground.

It has been a common assumption among economic writers that competition is free, and that there is no element of combination among dealers or manufacturers. Most writers, of course, have been well aware of the fact that in actual business dealings this assumption is not true, but it has seemed wise to make it and to take it as a basis for argument in their deductive reasoning. Too many of them, unfortunately, in their conclusions have forgotten that free competition was mere assumption, made for logical reasons. The most vigorous opponents of industrial combination have in like manner, tacitly at least, often made the same assumption; but it is so far from the truth in the actual business life of to-day that its adoption is certain to lead to misunderstanding regarding the nature of industrial combination.

The "friction" of competition is most readily noticed in the retail trade. Careless customers, ignorant of prices, call for goods which please them, and often

purchase without striving to get the lowest price. Others, from habit or feelings of friendship, deal regularly with one merchant without comparison of his prices with those of his rivals. The convenient location of his store, or his pertinacity in soliciting custom, often enables a dealer to sell for more than the lowest market price, so that competition, from the point of view of price, is far from being free, or at least from being efficient.

A more or less formal understanding among dealers also checks the freedom of competition, and, in fact, introduces an element of combination quite similar in kind, though less in importance, than that found among large manufacturers. In many small cities there exist butchers' associations, grocers' associations, associations of hardware dealers, of druggists, etc. Usually without formal contract these organizations substantially maintain a general level of prices throughout the city, besides furnishing to all of the different members the opportunity of reading trade papers, of learning the condition of the wholesale markets, and calling to their attention other matters of common interest in addition to giving information regarding the business rating of customers and often assisting in making collections of bills overdue. In such cities and villages a trader from the outside, particularly if he attempts to peddle his goods from house to house, is sure to be met with united action of all the dealers. And customers whose desire to save leads them to buy from mail order houses or themselves to visit the near-by cities to purchase goods are noted and common influence is brought to bear to check these tendencies. Industrial combination has begun.

Even without these associations, grocery stores, dry-goods houses, butcher shops, and other retail mercantile establishments in the same neighborhood usually have the same prices for similar goods. Occasionally one will cut the price of some article which he employs as a leader to attract customers to his store, and this will be counteracted by a similar cut on that or other single articles by his competitors. The main line of prices, however, under usual conditions, remains substantially the same without vigorous competition. There is a tacit friendly understanding that living rates shall be maintained, and these rates will enable the most skilful to make excellent profits.

At times, indeed, in order to avoid the name of monopolist, a large dealer in a small village may even encourage nominal competition. It is not uncommon for a large general store to furnish goods at considerably less than the usual retail price to some small dealer on the outskirts of the town, who, while asking the same price as the large dealer, can still reserve profit enough to keep himself in business, and to appear to be in competition with a rival. In one case which was noticed in a Western state, a wealthy man who had established large stores in several villages for the supply of their inhabitants as well as of mining and lumbering camps in the vicinity, found it advisable to take active measures to bring into each of the villages one, and in some cases more than one, small dealer, whom he supplied with goods at wholesale rates, in order that apparent competition might be maintained and real competitors be discouraged from beginning business.

Of course it is evident that in retail trade, as in the

case of large manufacturing establishments, if one merchant goes too far in the way of securing high profits by what are considered unfair means, or of extending his trade by lowering prices, the tacit understanding will no longer hold but there will develop vigorous hostility, shown by actual cutting of prices to rates ruinous for the less skilful.

These understandings are not so common among wholesale traders or manufacturers; neither is there so great a probability of widely varying prices for certain classes of goods being secured by different dealers in one community. The margin of profit is less in the wholesale trade; purchasers and salesmen both are much better informed regarding the state of the market; each separate sale being, relatively speaking, large, is more important. For these reasons and others, the competition is much more nearly free, but the element of combination suggested still exists.

Among manufacturers, the nature of the industry itself is of much importance in determining the character of the competition and the trend toward combination. If the goods manufactured are of a kind whose quality is uniform and may be easily tested, competition becomes almost solely a matter of price. Especially is this true if the article is one which is sold in large quantities. Salt, lumber, and grain in many states have their quality tested and certified by a government or a privately recognized inspector, and are always sold under the grades thus fixed. The quality of sugar is easily determined by the polariscope test, and all large buyers have the test made. Spirits, in like manner, are sold on the basis of proof spirits or of pure spirits,

as the case may be, and the test of any special stock is easily made. Similar statements may be made regarding refined petroleum. Among such goods, if competition exists, it must be chiefly a competition in price.

On the other hand, if the quality of goods cannot be easily tested, and especially if the goods are sold in small quantities, which can readily be put into packages for the use of retail customers, brands and trade-marks are usually adopted by manufacturers. In such cases, the competition does not become necessarily one which forces prices down, but may readily be primarily a contest in advertising and selling. Most buyers do not test the quality of Pears' soap to see whether it is better than that of a rival brand. Its manufacturers are not likely to cut the price in order to increase its sale. It pays better to increase the expense of advertising. The Royal baking powder may be perfectly pure, but the housewife who insists upon using it has probably never tested it in comparison with other brands. She has been attracted by the advertisement, has found the baking powder satisfactory, and insists upon buying it. It is a noteworthy fact that the largest of the earlier industrial combinations in the United States were those among the manufacturers of petroleum, salt, sugar, and spirits, goods of which the quality is uniform, and is tested by large buyers. Combinations among manufacturers of articles sold chiefly under trade-marks known by retail buyers are of comparatively late development. In the first case, a combination would be made to prevent a cut in prices; in the second, to save the costs of advertising and selling.

If the amount of capital which must of necessity be invested in a fixed plant for the successful production of any class of goods is large, the nature of the competition differs materially from that of an industry in which a small amount of fixed capital is sufficient to enable one to work to good advantage. In the first instance the number of competitors is likely to be much smaller than in the second. The loss arising from a temporary suspension of manufacture is very much larger, both absolutely and relatively, since it usually involves greater loss to machinery, more of a break in a complete organization of workingmen in different departments, which it may take much time to bring together again into harmonious working order, and a break with a larger circle of customers who are more difficult to regain. In consequence, competition in these industries, if it becomes fierce, is likely to bring disaster to the industry as a whole.

From three to five millions of dollars are required to build and run satisfactorily a sugar refinery. In the whole United States, only some forty sugar refineries were in existence before the formation of the Sugar Trust in 1887. It was not easy for a sugar refiner who felt the pressure of competition to close his establishment for the time being and later to start up again. He might better for an interval carry on the business at a loss. Competition among the refiners finally became so fierce that some eighteen of them had gone into bankruptcy before combination into the Trust abated for the time the fury of the contest.

An industry which requires but small capital to carry it on, will encourage hundreds, or more likely

thousands or tens of thousands, of individuals to engage in it. The great variety of circumstances, and the great differences in individual skill of the numerous competitors make it likely that some few will be continually on the verge of bankruptcy, and that from time to time individuals will be failing under the pressure of competition. The elimination of these least skilful or least fortunately situated competitors, whose manufacturing is carried on at the greatest cost, does not produce any wide-spread depression in business, but serves rather to elevate the general average of skill in the industry. While the individual unfortunates may perhaps be sympathized with in their misfortunes, their loss is, after all, a gain to industrial society, since thereby the plane of production is raised. It is the consideration mainly of industries of this type that has given rise to theories of normal price, marginal price, etc., as a safe basis for economic reasoning, and many writers in speaking of competition think of this kind only.

On the other hand, industries that must be conducted on a large scale with enormous capital naturally call into the business only a few highly skilled managers. The circumstances and skill of the different competitors may be so nearly equal that competition will eventuate, not in the elimination of some few while the majority are still making profits, but rather in a depression of the entire business, so that only the very few most skilful or best situated will be making any profit at all, while the others still struggling along may be losing money for a long period before they finally yield. Indeed, the result may well be that for a considerable length of time

all will be running at a loss; and such competition among strong rivals often produces at the end shoddy goods, reckless financiering, and speculative methods in business which are a menace to business prosperity. Competition of this nature, resulting in a general depression of business, or in the bankruptcy of a large portion of those engaged in the industry, with the consequent losses to their creditors, is not immediately at least an economic gain to society, although prices may be low. It is rather on the whole an industrial loss, although one must not forget that as yet it is in these struggles that captains of industry pass their cadetship. It is in this class of industries, in which the amount of fixed capital in the plants must of necessity be large, and the competition of necessity fierce, and generally turning upon price, that combination is not merely more likely to be found, but is probably more clearly and easily justified, than in the case of those industries whose successful management requires investment of but a comparatively small capital.

CHAPTER III

THE WASTES OF COMPETITION

CONTRARY to the popular opinion, competitive prices are frequently, if not usually, high prices. In industries of the kind mentioned in the preceding chapter in which competition turns almost solely upon price, the competitive price will naturally be low; but in the other cases in which the cost of selling becomes an important factor in determining the price, competitive prices are certain to be high as compared with the cost of manufacture. So, too, if there is much loss from production on a small scale, prices will be high as compared with what they might be if carried on in great establishments, although this added cost may or may not be a matter of a competitive waste. One ought not to lose sight of the distinctions between production on a great scale and production under monopoly, and between the wastes of competition and those of production on a small scale. Both wastes tend toward combination.

Of course it is not the intention to assert that competitive prices, even in these industries in which one may contrast competition and monopoly, are always as high as monopoly prices, although that might in many cases be true if one speaks of actual prices instead of using both expressions in a technical sense. It is probable that ladies' hats, gentlemen's neckties or

fancy shirts and other articles in the choice of which fashion, personal tastes, and the skill of salesmen enter largely as factors, sell for higher prices under a competitive régime than would be possible if a monopoly—even a legal monopoly—were given to one establishment. As will be noted later, however, such industries cannot readily be monopolized, unless one wishes to speak of personal skill or taste as a kind of monopoly. Before discussing the special wastes of competition which often make competitive prices high, one should note that it is intended in this connection to compare the actual prices received in the market with the cost of manufacture, not with the cost of production and sale in the market.

The advantages of large scale production are generally conceded. Those of combination, especially if the tendency is strongly toward monopoly are often denied. It will add to the cleanness of presentation if we note in order some of the wastes of competition that are lessened or eliminated by combination and then note some of the benefits of large scale production that are, of course, common also to the combination. The fact that the evils of the combination are not discussed in this chapter does not mean that they are to be denied or ignored. They will be considered later.

1. Manufacturers frequently say that the chief difficulties to be overcome in business are those of securing a market rather than those of manufacturing. This ordinarily means that, in order to make sales in competition with their rivals, it is necessary to take much care and to go to great expense in order to bring their goods to the attention and the favor of their cus-

tomers. If, through combination among different manufacturers, this competitive bidding of one against the other could be obviated, it is evident that a large part of this selling expense could be saved.

Wherever it is necessary for merchants to make selection of goods in order that they may suit the tastes and needs of their customers, it is desirable usually for them to see the goods before making purchases. Under those circumstances either the merchant himself must visit the manufacturer or jobber or else an agent of the manufacturer must visit the merchant. For many years it has been customary for travelling salesmen with samples of goods to visit merchants, in order to afford them this opportunity of seeing goods before purchasing, and of selecting those which are likely to suit the tastes of their customers. If one manufacturer of muslins or hats or drugs sends a travelling salesman to visit the retail dealers throughout a certain section of the country, rival manufacturers must in some similar way bring their goods to the personal attention of the merchants, or else sales will be lost. The result is that several salesmen from as many different houses travel over the same routes and show goods to the same merchants. If a combination among the manufacturers in the same line could be made, one salesman could show all of the goods of the combination to all of the different merchants substantially as well as the entire number could do before the combination was made. When the American Steel and Wire Company was formed, it was on this account found possible to dispense with the services of nearly two hundred salesmen. When one of the whiskey combinations was formed, about

three hundred travelling salesmen were spared without the business being in any way neglected.

Moreover, when competing salesmen visit a merchant it is often true that the more plausible or skilful salesman succeeds in taking the order, although his goods may possibly be inferior to those of his rival. The best salesmen, therefore, are often thoroughly trained, experienced men who command high salaries. When, however, owing to the formation of a combination, the merchant has but one manufacturer from whom to buy, it is not necessary that he become a victim of eloquent persuasion. It is sufficient if he see the different lines of goods with prices attached, and take his choice. A much less skilful salesman, therefore, provided he be honest and diligent, can do the business thoroughly well. The manufacturer may now employ a salesman for two thousand dollars, whereas against competitors it might have been profitable to pay five thousand dollars and more for successful service. The stimulus which it is so necessary for travelling book agents or clerks in retail stores to furnish to their customers is much less needed in selling to a dealer. The amount of his purchase depends mainly upon the demands of his customers, and therefore often upon his own skill as a salesman.

Competition also increases the necessity of frequent visits. In some portions of the Northwest it was at one time customary for the wholesale druggists to send salesmen through the country every six weeks or two months to show goods and take orders for specialties, samples of which it seemed necessary to exhibit. Orders for standard goods were regularly sent to the

manufacturers or wholesalers by mail. As competition sharpened, and the travelling salesmen of some firms began to make more frequent visits, once a month or once every three weeks, it became necessary for their competitors to follow, until finally, in certain localities, it had become customary for travelling salesmen to visit the retailers as often as every two weeks. The retailers themselves, having become accustomed to these frequent visits, grew gradually into the habit of reserving orders to give to the salesmen instead of sending them by mail, and the enormous expense of selling thus brought about increased largely the cost of the goods to the retailer and consumer. It must not be overlooked that from the viewpoint of economic society such efforts are mere wasted energy, a dead loss in efficiency if the results can be less expensively accomplished by other methods. It is probable, however, that the vigorous struggle for competitive profit in this case pushed new and at times useful goods on the market.

The amount of loss coming from this often misdirected energy can, of course, be merely a matter of conjecture in most cases. Mr. Edson Bradley, Vice-President of the Distilling Company of America, and President of the American Spirits Manufacturing Company, estimated, in his testimony before the United States Industrial Commission, that, in the sale of alcoholic liquors in this country, somewhere between the distiller and the consumer at least $40,000,000 a year were lost. He thought that this was lost primarily in the attempt to secure trade, and that the result was simply a higher price to the consumer. Part of this waste

comes from the wages paid to travelling salesmen and from their travelling expenses; and by lessening these items alone his combination saved $1,000,000 a year.

A striking bit of testimony from an opponent of the combination was given before the Industrial Commission by Mr. P. E. Dowe, President of the Commercial Travelers' National League in which he asserted (in 1899) that more than 35,000 salesmen had been thrown out of work by the organization of trusts and about 25,000 reduced in salary. He sums up: "$114,000,000 represent the annual expenditure cut off by the direct influence of the trusts."

The cost of advertising in papers and magazines, by show windows, "landscape decorations," and other means, adds greatly to the cost of putting goods into the hands of the consumer. The price of a single full page insertion in such a magazine as the *Century* or *Harper's* is at least from two to three hundred dollars, in *Cosmopolitan*, two thousand dollars, or in the *Saturday Evening Post*, from five to seven thousand dollars; yet every one knows that it is scarcely possible to open any of the popular magazines in any civilized country without seeing on one of the best advertising pages some smiling face with the inquiry, "Have you used Pears' soap?" Other soap manufacturers fill other pages with advertisements no less attractive or expensive, and the amount thus spent in competitive advertising must clearly cost millions of dollars per year.

Some firms push the sales of their wares largely through the offering of prizes of various kinds. For $10 one may secure a box of soap, which at the retail

price would cost $10, and in addition may receive a rocking-chair, a bedstead, a writing desk, a lamp, a baby carriage, or other article to suit the buyer's needs, of which the retail price would also be $10. It is true that instead of the prize one may take more soap, but the prize was, originally at least, the attractive feature. A manufacturer of spices advertised that for $37.50 a customer might receive spices of which the retail price would be $37.50, and in addition a premium of a forty-dollar clock. For $25 might be secured twenty-five dollars' worth of spices, and a twenty-nine-dollar Waltham watch, with many other similar offers. In all these cases, not merely was the quality of the goods advertised of the best, but the premiums were also of standard makes, whose value could not be questioned.

It should not be forgotten that all this advertising does not increase proportionately the amount of soap or spices consumed to advantage. If it did, the advertising could scarcely be considered an economic loss. The purpose of the advertising is not chiefly to persuade customers to buy more soap or spices, but to use Pears' instead of Colgate's, or Ivory soap instead of Babbitt's, or one favorite brand of spices instead of another. Such expense of advertising must, of course, add greatly to the cost of the goods to the consumer. It is probably not too much to say that in many lines it would be possible, if the competitive advertising were rendered unnecessary, to furnish as good quality of goods to the consumers, permit them to pick their brands, and charge them only one-half the prices paid at present, while still leaving to the manufacturer a profit no less great than that now received. The men

now employed in the work of advertising might well put their efforts to better use in the service of the consumers. High as is the artistic quality of some of the advertising, its educative effect would doubtless be reached in other ways at less cost.

The dissolution of the American Tobacco Company by decree of the Supreme Court of the United States did not result in lowering the price of tobacco. An important effect was the prompt expenditure of millions of dollars in advertising and selling new brands that had to be made popular by the separated companies in order that each might have an adequate line of goods.

2. The anxiety to make sales in time of sharp competition leads also, in many cases, to extension of credits beyond a wise limit, and the manufacturer, fearing to lose a customer, will often fail to exercise due diligence in the collection of debts owed him. A large combination, having control of a large proportion of its class of goods in the market, can readily avoid these difficulties, and Trust magnates testify that their losses from bad debts have been very greatly lessened through combination.

Mr. Chas. R. Flint, referring to the United States Rubber Co., said that in 1900 it lost less than $1,000 by bad debts out of a business of about $25,000,000, whereas he thought the loss from that source by separate companies on a business of that volume would have averaged more than $100,000 a year.

3. Whenever competitive business is carried on through many establishments, each working on a small scale, and particularly when the industry is one in which many qualities of goods of a somewhat similar nature

are manufactured, the buyer is often put to considerable expense in going from one manufacturer to another in order to secure the variety of qualities which will satisfy his needs. A large establishment which carries substantially all the leading qualities in stock, and which can thus supply the demands of any customer without trouble to himself beyond the presentation of his order, will readily secure trade which would otherwise be lost. This ease in securing orders is often a great source of saving to a combination and is rarely found in a single manufacturing establishment, however large. The Distilling Company of America found it advisable to purchase several of the leading brands of rye whiskeys in order that customers might supply themselves not only with alcohol, spirits, and standard grades of corn whiskeys, but also, without leaving the establishment, with a sufficient number of the finer brands of rye whiskeys, so that all their needs in these directions would be met.

4. A similar advantage comes from keeping a stock so large that the largest order can be filled at once. It has been estimated by some conversant with the sugar business that the American Sugar Refining Company, on account of its ability to supply any customer with all the sugar that he can require at any time, is able frequently to secure one-sixteenth of a cent more per pound than some of its competitors, they being compelled to go one-sixteenth below the regular market price in order to effect a sale.

These last two advantages apply, of course, to department stores and in some degree to any large establishment, but they strengthen the tendency toward

control of the market in many cases, even though monopoly has not been reached.

5. Large sums of money are frequently spent by competitors in the payment of cross freights which might readily be saved by combination. When the Michigan Salt Association was formed some years ago for the special purpose of effecting sales through a single agency, it acted as the sales agent for salt wells on both the east and west sides of the state of Michigan. Orders for salt to supply Chicago and the West were filled regularly from the salt-manufacturing establishments on Lake Michigan, while those for Detroit, Toledo, Cleveland, and the East, as far as salt was shipped in that direction, were supplied from those on Lake Huron and the St. Clair River, a saving thus being made of the shipment of salt across the state of Michigan by rail or around the state by boat through the Straits of Mackinaw. This saving in freights was great enough to make a profit for those in the Association, when the sale of salt to be shipped the longer distances at the same prices would inevitably have resulted in a loss.

In like manner, the Standard Oil Company, with its large refineries at Bayonne, N. J., on the Atlantic seaboard, and others at Whiting, near Chicago, aside from any question of freight discrimination, is enabled to secure a great advantage over many of its rivals who have but a single refinery from which all orders must be shipped both east and west. Indeed its control of the New England market for years resulted from the fact that it was able to make Boston—supplied by boat from Bayonne—its chief distributing point for that

territory, while its rivals found themselves in good part cut off by high freight rates from the West into New England. It was thought by many that rates had been purposely made to the advantage of the Standard Oil Company, but they were at any rate uniform and within the law. Had its rivals possessed the same facilities, the Standard Oil Company would not have had this advantage. The Tin Plate and Steel Companies, when organized into large combinations, made similar saving in cross freights, Mr. Gates, of the American Steel and Wire Company, estimating their saving at more than $500,000 a year, while other manufacturers name also large savings. The United States Steel Corporation in 1914-1915 built a large plant at Duluth, somewhat earlier an even larger one at Gary, Indiana, and in other places it has erected and improved plants with locations so chosen with reference to raw materials and markets that great savings in freights would result. It will be noted that this advantage comes particularly to those manufacturers whose goods are bulky, so that the freight forms an essential part of the cost to the consumer. Manufacturers of ribbons, watches, or other expensive and highly finished goods, while able to obtain a slight advantage in this direction, would yet find freight but a small part of their expense.

6. For some years before the formation of the old Whiskey Trust, the capacity of the existing distilleries was far more than was necessary to supply the normal demand of the country at profitable prices. In consequence, agreements were made from time to time among nearly all the leading distillers to restrict the output. One year each distiller pledged himself to

run his plant at only 40 per cent. of its full capacity. Another year the agreement limited the output to only 28 per cent. of the full capacity. After the formation of the Trust, out of more than eighty distilleries which joined, all were closed with the exception of twelve of the largest, best located, and best equipped, which ran at their full capacity; and the output of these was equal during the first one or two years to the entire output of all of the distilleries which had been running before. Of course it is true that, owing to the pressure of competition, a good many of the distilleries had been shut down before the Trust was organized. It is nevertheless probable that no other source of saving was so great as that which came from running the best distilleries to their full capacity and all the time. Mr. Havemeyer, in connection with the Sugar Trust, calls attention emphatically to this waste of excessive competition. Before the organization of that Trust, about forty sugar refineries had been running, but none of them could work to their full capacity and all of the time, and, as has been said, as a result of the competition some eighteen went into bankruptcy. The Trust was formed, and while eighteen corporations joined, the whole resulting capacity was in a relatively short time concentrated into six or seven, the combination finding it profitable to shut down or even dismantle several of the refineries which it bought. It then ran the rest to their full capacity all of the time, and in this way, Mr. Havemeyer thought, the greatest saving of the Trust was made. Even at present, when five or six independent refineries are running in competition with the American Sugar Refining Company, it is

thought by the combination that it derives a somewhat similar advantage. In most cases the rivals, owing to the fluctuations in prices, are not able to run to their full capacity, and in many cases run only part of the time. On the other hand, the Trust, supplying some 90 per cent. of the market, adopts a somewhat more thrifty policy. Substantially all of the refineries, with the exception of the largest and best equipped one in Brooklyn, are run to their full capacity all of the time. In this one refinery the sugar combination places its most skilful men, and through the operation of that one establishment fits its supply to the demands of the market. This is most carefully watched from day to day, and every possible method of avoiding waste and loss from the restriction of output, which at times becomes necessary, is employed. The loss from a partial output is thus confined to the one establishment which forms but a small proportion of the total capacity of the organization, whereas in the case of its rivals the loss applies to the entire capital invested when only one refinery is under consideration. It has been estimated that this saving to the American Sugar Refining Company is as high at times as one-eighth cent per pound, a margin sufficient in itself to give a large profit. It is interesting to note that the new sugar combination formed, in June, 1900, to compete with the American Sugar Refining Company, gave this saving as the chief reason for its formation. Many people indeed put the ability to adjust their output to the market as possibly the main advantage of a great combination and ascribe the steady profits of the Standard Oil Company and of the Sugar Combination during periods of depression

to this factor. Of course, when a combination produces a large percentage of the entire output of a country its influence in this regard is marked, and may often prove an important factor in tiding over a period of depression following a crisis, as was the case with the United States Steel Corporation after the crisis of 1907. This waste of competition, then, which comes from the inability to adapt one's plants and output to the needs of the market without excessive loss, can be partly saved by combination of many manufacturing establishments in one industry under one management.

7. When one establishment, in order to supply the needs of its customers, manufactures several different grades or qualities of goods, it becomes necessary frequently to change the machinery, and even to stop it at times while changes are made from one class of work to another. For example, the former president of the American Steel Hoop Company, Mr. Guthrie, testified that he manufactured from eighty-five to ninety different sizes and kinds of goods. If these goods were manufactured in one or two establishments, there would be frequent changing of the rolling machinery in order to fill any one large order which called for many different sizes. Under the new circumstances, a large order calling for different classes of goods could be distributed among the different mills, each one adapted for the manufacture of a particular class. In this way changes of the rolls are largely avoided, and the delays are obviated which would result in large waste of time and energy, provided the competitive system, or the system of small independent mills, were in vogue. Mr. Guthrie's opinion was that this saving alone amounts to from a

dollar to a dollar and a half per ton in manufacture. The leather combinations find that they have avoided similar wastes by manufacturing certain special grades of shoes in one establishment to which special kinds of leather can be sent, instead of having each establishment separate the leather for itself and manufacture many different grades of shoes. This waste of competition or, more accurately, this waste due to subdivision which can be avoided by combination, of course varies largely with the different kinds of manufacture. In some the waste is doubtless very great. The saving in a large establishment does not of necessity imply monopoly.

8. Another advantage from the combination of different establishments, one that tends to strengthen monopoly, comes from the common use of patents, trade marks, brands and similar business devices. The use of a patent or trade mark is usually restricted to one establishment; by the combination it may become almost general. Of course, the combination, by selecting the best patents and suppressing or preventing the use of others may foster monopoly. Some combinations are accused of buying up competing patents for the purpose of preventing their use.

9. The head of one of the largest stores in the country was not long since showing a friend through the establishment. To inquiries as to wages of different employees, the reply was: "This man receives $10,000 per year; that one receives a salary of $15,000 per year," and so on, as the heads of various important departments were pointed out. When the friend remarked that it must be difficult to pay dividends if

such large salaries were paid to so many men, the manager replied: "There is nothing so cheap as brains; they must be had at any price." Every person who deals with large affairs in any profession or trade or walk in life recognizes the fact that nothing is so rare as excellence. Whether the work be manufacturing, or transportation, or merchandizing, or teaching, or law, the fact is the same. The first-class man is exceedingly rare, and is cheap at almost any price. The great merchant princes, like Stewart, or Field, or Wanamaker; the great business men like Carnegie, Rockefeller, Vanderlip, Gary, Schwab, Vail, McCormick, are possible under present circumstances because such talent for managing, whether for the public good or ill, is rare; and when it is found, the opportunities for its employment readily come, as they do to the great lawyer or preacher. Without ignoring the fact that the competitive system plays a noble part often in selecting for industrial society the great leader, it is still true that one of the chief wastes of competition is found in the fact that the separate establishments are mostly in the hands of mediocre men, who, unable to effect the savings that come from the most skilful organization or from a judicious forecast of the market, lose money for their stockholders without any saving to consumers from low prices. The consequent loss to economic society as a whole is enormous.

10. Great skill in management is by no means, as many seem to think, the mere taking advantage of an opportunity to cheat a customer or hoodwink a competitor. It frequently, if not generally, results in an absolute saving of energy by means of the

more skilful organization of labor, and the adaptation of ways and means to ends. The combination, bringing together numerous establishments of the same kind, is enabled to select the most skilful men to place in charge, and thus practically an entire industry can be managed with the same skill as a single establishment. While it is of course true that one man cannot give his personal attention to the details of a very large business, so that at times, doubtless, in the combination there is a certain waste that comes from lack of detailed inspection by the chief owner, it is nevertheless true that this waste is in most cases comparatively little. The man of really great executive ability knows so well how to organize his business that men of inferior capacity working under his system, even though only upon salaries, are enabled to do better and more careful work by far than the same men in independent positions, where they are unable to consult to advantage men more skilled than they. One chief gift of a great executive is the power to select and direct subordinates. The skill of Grant as a general was shown not more in the planning of battles than in the selection of his chief commanders, and in his power to discern wherein they could be trusted, so as thus to inspire each to his best efforts.

The same skill is shown by a great captain of industry, possibly to a much higher degree. The workmen in an industrial establishment are not under the same constraint as are soldiers. Willing workers do more work and better work than do sullen drudges, and much of the skill of the industrial manager is shown in dealing with these human factors. The small concern gives opportunity for the personal touch; the large one

for pension funds and a type of *esprit de corps* not possible in small ones. The special discussion of these points comes in another chapter.

This advantage of management by the best talent is a matter also of the proper distribution of talent. One man in his independent establishment may have been peculiarly successful on account of his skill as a salesman; another, on account of his organizing ability; a third, on account of his special technical knowledge, and so on. If these various competing establishments are united into one, to each man can be given the department for which he is peculiarly adapted, and in that way the joint establishment gets the advantage of the peculiar skill of each.

11. Managers of the industrial combinations often say that they secure many of the benefits of competition through their system of comparative accounting among their different plants. Each plant is required to send to the central office daily or weekly reports of actual conditions: materials, labor, sales, prices, cost analyses, etc. These are so tabulated that one can see at a glance the relative standing of each plant in all particulars. If labor cost per ton is high in one establishment, the manager of that plant is asked to explain; if in another the by-products per ton or per head are exceptionally good, the manager is commended. By this system competition among managers and establishments is kept keen and the competition is more beneficial than under the old system. Under that a manager might know that his rival was beating him, but could not tell how or why; in the combination, he is told his weak points and his strong ones and then the general

efficiency is greatly increased. Moreover, as promotion depends on success, the stimulus is practically as great as in the case of an independent owner.

12. A very large establishment finds it profitable to manufacture some by-products from its waste material, which, owing to the extra capital needed, or to an insufficient quantity of waste material, its smaller rival must either lose entirely or part with at a disadvantage. The largest oil refineries at times make as much profit from by-products as from their illuminating oil.

The great meat-packing establishments have also carried the utilization of by-products to almost a wonderful degree and of late years nearly all the great combinations like the Steel Corporation, the International Harvester Co., the Standard Oil Co., and others keep a staff of experts and inventors for the special purpose of finding out new uses, new methods, new machines to lessen production costs and improve the products.

13. Manufacturing establishments are sometimes embarrassed by the difficulty of securing a proper supply of raw material at the exact time when it is needed, and in proper quantities and qualities. On the other hand, miners or other producers of raw material are also frequently embarrassed in finding a sure market for their product. In consequence of these facts, many combinations such as the Federal Steel Company and later the United States Steel Corporation were made, not of those who were competitors in the same line of manufacture, but rather of the producers of raw material and the manufacturers of the finished product, in order that these requirements of demand and supply might be readily met, and the course of production

from the raw material through to the highest finished product be carried on without delay or unnecessary friction. In other cases the large establishments find it necessary to secure by purchase, control of raw material for years in advance, often at an expense greater than that secured by the so-called "integrated combination."

It would seem that if there is any real economic function of combination of capital, whether it has attained monopolistic power or not, it is this: saving the various wastes of competition,* in great part by providing for the direction of industrial energy to the best advantage. Only by such large scale production and distribution and often only by combination of many separate plants and minor industries can it be made possible for the general public to secure articles of consumption at an absolutely low price on the basis of a low cost of manufacture. How far combinations thus far have permitted the public to gain these advantages, how far they have used them for the benefit of their workmen, and how far they have themselves selfishly taken advantage of their superior productive power to the detriment of the public, will be considered elsewhere.

*Under wastes of competition may properly be understood also those of subdivision in production or of production on a small scale; under combination also mere aggregation of capital. But in other connections these separate meanings should be distinguished, as is done later.

CHAPTER IV

FAVORS TO INDUSTRIAL COMBINATIONS

MANY writers and thinkers on the subject of industrial combinations are of the opinion that they are usually brought into existence by special favors, either of the Government or of other corporations such as the railroads, and that, at any rate, whatever monopolistic power they possess is secured in this way. It is even the contention of some that unless the industries themselves are natural monopolies, such as railways and the telegraphs, or unless they are granted some special legal privileges, such as patents or copyrights, it is impossible for them to secure monopolistic power without some special favors shown them.

The protective tariff is probably most frequently cited in the United States as a special favor to an industry that brings into existence monopolies. The dictum of Mr. Havemeyer, the former President of the American Sugar Refining Company, in his testimony before the United States Industrial Commission, that "the mother of all Trusts is the customs tariff law," has found ready acceptance by large numbers of thoughtful people. Mr. Havemeyer's contention is that a high tariff, by making the protected industry very profitable, will tempt much capital into that special field. In many cases, the establishments, on account of the high profits, will be placed carelessly in unfavorable loca-

tions. In other instances, for the same reason, men who are not skilled in the industry will be ready to engage in it. The promise of high profits having thus tempted many rivals into the field, the pressure from this home competition becomes severe, and investors feel themselves cheated of their anticipated profits. With the profits thus in sight, or even perhaps with the memory of large profits in the immediate past to stimulate them, they more readily combine, not primarily for the sake of reducing expenses, but rather for the purpose of reaping from consumers a large reward through monopolistic high prices. It is beyond question true that several of our largest combinations have been formed in industries protected to a considerable extent against the pressure of foreign competition by the high protective tariff. Indeed, Mr. Havemeyer himself acknowledged that, had the sugar industry at the time of the formation of the Trust not been so protected that there was promise of a high profit without foreign competition, he would not have risked his property in the combination, which of necessity included also many of those establishments less favorably situated for cheap production.

The situation is, however, not so exceptional as is often thought. Even in unprotected industries in which the United States has an advantage, the same principle of high profits in the earlier days, lower profits from the pressure of competition, and the consequent temptation to combination exists. If one considers what the effect would probably be of the removal of the protective tariff in an industry in which a combination exists, one can readily see that, while the public

might be benefited, the result would hardly be the prevention of monopoly. If the combination, as is ordinarily assumed, were stronger than the few independent competitors still in existence in the country, the first effect of the removal of the tariff would be the ruin of the independent producers. Provided the industry were dependent entirely upon the tariff for its existence, the removal of the tariff would of course kill the Trust, but would at the same time kill the entire industry. The question of the wisdom of supporting an industry by the tariff is not here raised. It might be wise to kill a certain industry, but it should be borne in mind that those who advocate the removal of the tariff for the sake of destroying the Trusts do not ordinarily contemplate such an outcome. The removal of the tariff, whether the industry were dependent upon it or not, would certainly destroy the rivals of the Trust before the Trust itself would go out of existence. In either case, however, the consumers would, beyond question, for the time being, enjoy lower prices.

It is also true that the removal of the tariff in many instances by strengthening the competition from foreigners would simply bring about an international combination. There has long existed in a form more or less disguised an international thread combination. Chairman Gates of the American Steel and Wire Company testified before the Industrial Commission that, during the summer of 1899, while abroad, he had several meetings with German wire manufacturers, who are also combined, for the purpose of seeing if it were not possible and advisable to form an international combination for the manufacture of wire, since

the Germans were the most serious competitors of the Americans. The plan suggested was for the two countries to divide the world's markets in accordance with a fixed percentage, and to agree upon an increase in price. The difference of opinion as to the percentage of the markets which should be allowed to the Americans—Mr. Gates demanding fifty, while the Germans were willing to grant at the outside not more than forty-five—and further differences of opinion regarding the increase in price—he being content with an increase of $10 per ton, the Germans wishing to secure one of $30—finally made him distrustful, and resulted in the breaking off of the negotiations. The mere fact, however, that two powerful, even virtually monopolistic, combinations in two leading countries could in this way have progressed so far in negotiation, makes it perfectly evident that the pressure which might be brought to bear by the removal of tariff obstructions, or, in other circumstances, by the imposition of tariff burdens, might readily result in an international combination of some form.

Even without such pressure international combinations or at least combinations international in scope and dealing with foreign governments regarding terms have been long in existence. Nearly all of the larger manufacturers have now their agents abroad; sales of iron and its products, of tobacco, of harvesting machinery, of petroleum, are made continually in most foreign countries; and it has not been at all difficult to enter upon negotiations for combination. It is true that some years ago the great copper syndicate of Paris, which seemed for the time to control substan-

tially the entire output of the world, made a most humiliating failure; but such experiences ordinarily serve but to point out weaknesses in a certain plan and to suggest better methods for the future. Since 1902 the great tobacco companies of Great Britain and of the United States have agreed not to invade each others home territory and have joined in the British-American Tobacco Co. (Ltd.) to develop and largely to control many markets foreign to both countries. Their success augurs well for the possibility of other such agreements, many of which have had wide influence. A striking illustration of the range and power of combination in the international field is furnished by the banking syndicate—of four, then six, then after the forced withdrawal of the American group—of five groups of banks backed by their respective governments to make loans to China. Not only bankers outside the group but the Chinese Government felt that the syndicate had a control of the situation substantially monopolistic, and that China could not, as a matter of fact, secure loans outside the syndicate, if such loans had any political bearing. It is not yet clear how far the power of the syndicate extends.

Freight discriminations in behalf of favored shippers are very frequently cited as a chief cause for the formation and rapid growth of industrial combinations. There can be no doubt that such discriminations have frequently been made in favor of large shippers, whether manufacturers, buyers of grain, shippers of dressed meats, or others. In fact, in many lines of business for many years in the United States, it was probably true that no person who did not receive some rebate

from the printed tariff rates, or other favor from the railroads, could remain in business, as such rebates or other favors were so frequently given.

For years after the law against rebates passed there was reason to believe that this evil still existed to some degree. For some years prominent shippers expressed the opinion, based apparently on their own experience, that rebates were regularly paid in disguised form by the railways to a few of the largest shippers, and that in this way the smaller dealers were compelled to sell their goods directly to the larger. Others did not hesitate to say in private that their shipments were regularly made by special contract, and that practically no attention was paid to schedule rates. Shippers, railway officials, special students particularly well acquainted with the problems of interstate commerce, all asserted that such discriminations existed in favor of the larger shippers. Now, however, the practice seems to have stopped and the evil to have been overcome, except in form so changed that it is not contrary to law.

The enormous and dangerous power of the railways, by giving special rates in favor of shipments to one town to build up that town at the expense of its neighboring rivals, or to pour wealth into the lap of one great shipper or manufacturer, while bringing by the same process ruin to his competitors, can hardly be overestimated. The fact that such discrimination has been considered by our highest courts and ablest writers contrary to public policy as well as to good morals does not lessen materially the difficulty of the problem.

There can be no question that the largest shippers

are able in many cases not merely to lessen labor for the railways, but also to render more secure their profits, their steadiness of shipment, and certainty of pay. Moreover, they can in many cases render direct service to the railways in the way of adapting their shipments more or less to the conditions of traffic so as to accommodate the railways, and in cases of agreements more or less formal, among different roads, they can act as eveners of traffic. Many of these services, some of which are perfectly legal and proper in their nature, would seem to justify some sort of payment, and it is on the basis of such benefit received that the railroads attempt to justify their discriminations from an ethical as well as from a business standpoint. Such justification might, too, in many cases be complete, were the railroad dividends alone under consideration; but if the public weal is threatened by monopoly thus created, and if individual ability and effort, however well directed, are thus secretly rendered useless, there can hardly be justification from the social point of view. In interstate matters, of course, since the passage of the Interstate Commerce Law in 1887, such discriminating practices are clearly illegal, and they have generally been considered as contrary to public policy; but that they have been granted, and that business has been done largely on that basis, is scarcely a matter of question. That such discriminations, too, usually favor the large shipper, giving him at times monopolistic power, and increasing his monopolistic power, if such already exists, is beyond doubt.

Of course the main elements of evil are secrecy and discrimination. So far as special rates can be

made general, even though the conditions are such that few can meet them, if also they are public, the evil is greatly lessened or in some cases removed.

Inasmuch as such discriminations are contrary to law, it has been asserted by several of the larger combinations, such as the Standard Oil Company, that it is even better policy for them, to say nothing of the moral aspect of the question, to live up to the law strictly, and see to it that their rivals are forced to do the same, than to run any risk of being caught in illegal practices. This is especially true where the shipments are very numerous and are made from widely separated points, so that evasions of the law would almost certainly be detected. One scarcely needs to add that their rivals believe that their practice has not always agreed with their avowed policy, and in some cases at least the courts have found them guilty.

Aside, however, from violations of the Interstate Commerce Law, the large combinations at times get freight advantages which add greatly to their power. It seems to be established that the Standard Oil Company receives decided advantages from the location of its refineries at Bayonne, New Jersey, when the nature of the freight rates on oil shipped into eastern territory is taken into consideration. Shippers of goods from western Pennsylvania or Ohio to points in the New England States are usually given Boston rates on most articles; but on petroleum the rate is arbitrary, a local rate usually being added to the through Boston rate. On that account the rivals of the Standard Oil Company whose refineries are located in western Pennsylvania or Ohio find it impossible to compete

at many points which they could easily supply at profitable prices, provided that Boston freight rates were charged. The Standard Oil Company, by bringing its oil to East Boston in tank steamers from its refineries on the seacoast, can distribute throughout New England at only the local rates, thus securing so decided an advantage that it is able to control the oil market throughout that territory. In like manner, by having very large refineries located at Whiting, near Chicago, it is able to supply the South and West at lower rates than its rivals, who ship from western Pennsylvania or Ohio, the rates from the immediate neighborhood of Whiting being apparently much lower than those from localities where rival refineries are located. It may pay exactly the same rates as its competitors pay when shipments are made over the same routes; but, owing to the fact that its refineries are more advantageously located, it not only secures a great advantage in the saving of cross freights, but it can also save through favors in rate making. It is not thought by many that there is any direct discrimination when oil is shipped over the same route, but the railroads seem in some instances to have arranged their rates in such a way that they work decidedly to the advantage of a company situated as is the Standard Oil Company. The arrangements made, too, are so different from those that obtain in other lines of goods that they give color to the belief held by many that the railroads and the Standard Oil Company are working, in certain cases, practically in partnership. It is probable that a careful study of the freight rates on other classes of goods controlled by other very large shippers would reveal similar

arrangements. Especially may one fairly make this assumption when specific cases of favoritism that are illegal in form as well as in spirit have been openly acknowledged both by the railroads and by shippers.

The distinction should not be overlooked between the proper and legitimate advantages derived by large shippers and combinations through better facilities for handling, adaptation of trade to circumstances and markets, savings in cross freights, etc., and those arbitrary discriminations, whether technically illegal or not, by which a railroad may at will build up or ruin a special locality or any single shipper without regard to his care or skill.

CHAPTER V

COMBINATION AND MONOPOLY

THERE is much difference of opinion as to whether or not the large combinations of capital of the present day are to be considered monopolies; and since the decisions of the courts regarding combinations are based largely on their views regarding monopoly, the question has a decidedly practical aspect. When a monopoly is found to exist, there seems to be also a difference of opinion as to the force by which the monopoly is retained. Of course circumstances are likely to differ in the different cases. Some of the larger combinations have succeeded in obtaining control of practically all of the valuable patents in certain lines of manufacturing, thus giving them a legal monopoly which would be protected by the courts. Practically all of the barb wire made in the country at the present time, as well as the wire fencing, is in the hands of the American Steel and Wire Company, a subsidiary of the United States Steel Corporation, because that company owns all of the valuable patents, with one or two exceptions, in those lines of manufacturing.

No one questions the fact that the so-called "industries of increasing returns" or "natural monopolies," such as the railways, the telegraphs, the telephones, the street railways, gas and electric-lighting plants, etc., do, as a matter of fact, in most cases possess a real

monopoly. It is, of course, true that this monopoly is probably in no instance entirely without some competing force in operation against it. A gas company may supply all of the gas used in a city, but some of the more thrifty individuals will use wax candles or kerosene lamps instead—a kind of competition which may often materially affect the dividends of the gas companies. There may be but one street railway company in a city, but if its prices are high, or if they are even at the ordinary rate, there is always more or less competition from carriages, omnibuses, and bicycles. In all of these instances, however, the fact that there is more or less business carried on by others does not prevent the existence of what is properly called a monopoly.

Most of the instances which have been cited of the savings of the wastes of competition which come from the combination of different establishments, have dealt with organizations that are neither "legal monopolies" nor "natural monopolies," as those expressions are ordinarily understood, but are simply combinations with a very large capital; although in some cases, like the Standard Oil Company, which controls pipe lines, there may be united with them some natural monopoly, or they may own important patents or they may receive some special favors, such as those previously mentioned of freight discrimination or of favorable tariffs, which may aid them in maintaining their position. The advantages of freight discriminations and tariffs are to be found also in the case of nearly all large manufacturers or shippers, even though they have not been able to secure what may be considered a monopolistic control of the market.

It is even sometimes asserted that the possession of very large capital is in itself never sufficient to secure a monopoly in any industry, while the popular opinion clearly is that practically all of the so-called Trusts, whether recipients of these special favors or not, possess monopolistic power, and are properly called monopolies. Any differences of opinion that arise over such a question are usually differences coming from misunderstandings regarding terms. Late decisions of the courts and the common usage of later days justify the use of such expressions—which, strictly speaking, are often self-contradictory—as "partial monopoly," "temporary monopoly," "virtual monopoly," etc. It should be kept in mind that these expressions themselves call attention to the difference between those conceptions and that of, let us say, a legal monopoly. In the case of the legal monopoly that comes, let us say from a patent right, the monopolist has absolute control of the market, and may forbid under penalty of law any competition whatever. The monopoly price, then, may be fixed on the basis of the greatest net returns to the manufacturer. In determining this price, the cost of production for our purpose here being assumed to be constant, the manufacturer takes into account mainly two factors, the number of sales that can be made, and the price, or, to put the matter in another way, the effect of price upon the demand. Will the net returns be greater with more numerous sales at lower prices, or with fewer sales at higher prices? The question of competition does not enter into the problem. Only the demand need be considered.

On the other hand, it seems to be generally conceded

(at any rate the courts and popular usage concede it) that it is proper nowadays to use the word "monopoly" even when the element of competition is not entirely eliminated. A manufacturer who controls, let us say, 90 per cent. of the output of any product is enabled to put prices considerably higher, for the time being, than could any one of ten active competitors, each one of whom controlled not much more than 10 per cent. of the output, or than fifty competitors, no one of whom controlled more than 3 or 4 per cent. of the output. The manufacturer with 90 per cent. of the output must, for the time being, supply a very large majority of would-be purchasers. If he puts his price above former competitive rates, even to a considerable degree, it will still be true that a majority of the customers must buy from him, since the other sources of supply are not sufficient to meet their needs. To be sure, exorbitant prices cannot be held for any great length of time without calling competitors into the field; but, in many instances, a rival powerful enough to make really effective competition could not build and equip a new plant, costing possibly some millions of dollars, short of two or three years. While one may grant that under those circumstances the monopoly would be only temporary, it clearly seems proper, as it certainly is common, to say that the manufacturer possesses, at least temporarily, a monopoly. He certainly is exercising and can exercise for a considerable length of time a really monopolistic power. It is also, however, true that in fixing prices so as to secure under the circumstances the greatest net returns, he has to take into consideration a third factor—that of potential

competition—which does not enter into the problem when the monopoly is legal in its nature.

He may find it best to secure the greatest returns possible for only a short time, knowing that, if he follows that course, competitors will comparatively soon force him to lower his prices. Perhaps the best example of a temporary monopoly following this plan is to be found in the case of the Wire Nail Pool, which existed in the years 1895-96. The Pool was enabled to increase the prices rapidly from $1.45 per hundred to $1.80, to $2.15, to $2.65, to $2.85—where it held them six months—to $3, for two months, and finally to $3.15, where it held them six months more before the break came. By the end of that time, after some eighteen months of monopoly, competitors had succeeded in providing facilities for manufacture, so that the Pool was broken, and prices fell back to a competitive rate, although not quite so low as they had been before the organization of the Pool. Indeed, in this case, the boldness of the Pool managers in pushing prices so very high doubtless extended the time of their monopoly. Competitors enough to break the Pool would have arisen sooner, had not each one anticipated its speedy collapse on account of its high prices promising enormous profits. Each believed that some one else must very soon enter the field.

On the other hand, it may be that the so-called capitalistic monopoly may consider it wiser to attempt to secure its returns permanently. In that case, while it may perhaps keep prices somewhat above former competitive rates, it must keep them low enough so that the temptation for competitors to enter the field will

not be great, and it must be able to put them without absolute loss lower than it would be possible for an ordinary rival to manufacture and sell.

It would probably be granted by all that an organization controlling for the time being 90 per cent. of the output of any product, by putting its prices down, can compel its few rivals to follow; while, on the other hand, it may put prices up above former competitive rates, and can still for a considerable length of time, largely control sales, inasmuch as the other sources of supply cannot fill the demand and moreover are glad to take the higher prices without much cutting to increase their sales. If its competitors, controlling only 10 per cent. of the output, put prices up, they will make practically no sales, inasmuch as the combination can supply on short notice the entire market; while, on the other hand, if they put prices down below the market rate, the combination will not be compelled to follow in all places, inasmuch as the competitors cannot supply the entire market. It need meet their prices only in their own localities. In fact, it is not infrequently the case that the small competitor, owing to the fear of customers that he may not be able to supply their orders, will be compelled to sell very generally at something below the market rate as fixed by the combination. Testimony, given before the Industrial Commission, as has been previously stated, seems to show that some of the competitors of the American Sugar Refining Company have during the past year, for a considerable part of the time, been compelled to sell at one-sixteenth of a cent per pound below the market rate.

On the other hand it may be noted that a small man-

ufacturer, when, by competition, rates are driven below cost, can compel his monopolistic rival to suffer large losses. By going into the large markets and offering goods at low rates but delivering very few, he may at times compel his rival to sell very large quantities at a loss, so that his total losses will be vastly greater than those of the small man.

Now, will experience justify the contention that mere possession of great capital will give substantially no monopolistic power permanent in its nature, unless some element of legal or natural monopoly or some special favor, such as comes from the tariff or from discriminating rates on railroads, be also secured? Of course this question cannot be settled absolutely on a basis of fact; but certain advantages come from the possession of large capital which clearly under our present system of laws tend toward monopoly. So far experience seems to justify the belief that monopoly within certain limits (*i. e.*, monopoly as the word is at present used, meaning unified control enough to hold competitors well in check, as evidenced by the power to put prices higher than former competitive rates while still excluding nearly all competitors), as has been intimated, may be secured simply by the possession of large capital. This power to get higher rates depends generally upon the ability to put goods on the market without loss at lower rates, if need be, than those charged by its rivals.

And yet the experiences of the United States Steel Corporation and of the American Sugar Refining Co., seem to show that in the case of well equipped competition it is, as a practical matter, not wise policy and

probably not even possible to kill competition entirely. A strong competitor with only one plant, if that is well equipped, could still hold the field in its own locality even though it could not follow its greater rival into all its extensive territory. While the combination might still largely dominate the great market its so-called monopoly could hardly be exclusive.

A large combination, controlling from 75 per cent. upward of the output, with its manufacturing plants favorably located in different sections of the country, would certainly have a decided advantage in freight rates, especially if its products were bulky, over any competitor who would set up in business, unless that competitor were to enter the contest with substantially equal capital. If such a rival entered the field, there would be in operation manufacturing plants which, on the whole, could readily supply one-half more product than the country needed. It may readily be granted that if capital were on hand to be invested in such large amounts, the new organization could force the old combination to sell at former competitive rates or lower. Those, however, who take the position that potential competition will prevent prices from going at all above former competitive rates, overlook the fact that new capital is not at all likely to be invested under such circumstances, unless the profits of the combination are put very high indeed. The reason for this is perfectly evident. It is absolutely certain that, if competition of that kind is tried, prices will be forced down not merely to the normal competitive rates among small manufacturers, but far below that, and those

investing their capital for purposes of competition are certain to make, instead of the high profits of the existing combination, very low profits or none at all.

The same situation exists, regarding the advantages of a large organization with branches in different parts of the country, in the possibility of its lowering prices to cost or lower in special localities, for the sake of forcing out its smaller rivals, while keeping prices elsewhere above competitive rates among small manufacturers. This power of destructive competition alone, which may depend solely upon its large capital shrewdly invested, is sufficient to enable it to crush out any small rival. And yet numerous small rivals each in a different locality and each striving only to hold its own small field will cut so deeply into the profits of the great combination that they will materially affect its hold on the market. These facts combined with restrictive legislation have led most of the great combinations to abandon largely the practice of mere destructive competition. On the other hand, if a rival powerful enough to meet the cuts of the great combination in substantially all markets were to enter the contest, it would be with the absolute certainty that, instead of securing high prices and the consequent high profits of the existing combination, the result must inevitably be a competition so fierce that prices would be forced below usual competitive rates, and profits would entirely disappear. If it be suggested that such competition might be started with the idea of selling out to the combination, the fact still remains that this enlarged combination, organized with the certainty that it would possess plants sufficient to supply considerably

more than the normal demand of the country at remunerative rates for a period of years, would, in all probability, make low profits on the total capital invested. If it attempted to make high ones, its prices would need to be put so high that still other competitors would enter the lists, and in course of time a reorganization must take place which must result in great loss of capital. This ultimate result will make the first strong would-be competitors wary. The various experiences of the American Sugar Refining Company in its earlier competitive struggles with Spreckles and later with Arbuckle seem fully to justify the above conclusions.

This same line of argument applies to practically all of the advantages that are to be secured by a large industrial plant. The only difference between the large business and the capitalistic monopoly is, after all, one of size and power which come from capital. A large manufacturing establishment which does not supply more than 10 per cent. of the output of the country may, perhaps, as regards the division of labor in the manufacturing plant itself, be able to manufacture as cheaply as a great combination which controls 90 per cent. of the output. On the other hand, in many lines of industry, it does not have the same facilities for marketing its product, owing to increased cost of transportation and a relative increase in the cost of advertising. Its power of competition is also smaller, since it cannot so readily make cuts in special localities against small competitors while keeping up its prices elsewhere, and since, also, supplying so small a part of the market, it cannot get its prices even temporarily above normal

competitive rates. Neither can it secure the numerous other advantages of a great combination which have already been cited.

This element of fear on the part of the small would-be competitor, who knows that he can be crushed out, is the influence which keeps him from investing his capital until the combination is securing considerably more for its product than competitive rates among small manufacturers. The certainty which keeps the large would-be competitor out, even when prices are considerably above such competitive rates, is that after he has entered the business the existing combination must force the competitive fighting so hard that profits will entirely disappear during the contest; and the knowledge that if a combination with the competitor is made, it must be with so large a capital and so much surplus productive capacity that even for a goodly time in the future the profits must be comparatively low, or more probably non-existent; while the endeavor to make profits would push prices up again which might tempt in new rivals.

The only kinds of competition that are likely to prove effective, if any does, are either that from another great combination in a collateral line of work or that from numerous smaller institutions each selling primarily in a special field or in a special locality. For example, a great steel combination might effectively add to its plants some tin-plate mills or wire mills or extend its work into any of the numerous branches of that industry. This movement has already begun in various lines of industry, both in the way of competition and of combinations which attempt to include all steps

of manufacture from the mine to the highly finished product. Such combinations will probably extend still further; but this fact does not change the principles laid down. It simply points to larger consolidations.

It will thus be seen that we may make properly a distinction between merely large capital and capital large enough to give an organization a virtual monopoly if it cares to exercise its power; otherwise to assure it an industrial leadership that may often exert an influence toward steadying the market that may prove in times of crisis helpful to an entire industry. The competitors of both the United States Steel Corporation and of the International Harvester Company have testified strongly to their fairness and their helpfulness in such emergencies.

It also seems certain that the sources of savings of a great combination, added to this fear of the attacks by great capital, are sufficient, in spite of potential competition, to enable a large combination to secure permanently under existing laws profits considerably above those which could be secured under a competitive system of smaller men, although not so high as might readily be secured by a legal monopoly or by a natural monopoly. This fact seems to justify the use of the expression "capitalistic monopoly," although of course one may readily concede that the power of monopoly in this case is not so complete as in the others.

One may note still further that experience seems to show that these larger combinations in the earlier days of the Trust movement frequently pushed their prices so far above usual competitive rates that other capital entered the field and pushed prices from time

to time back to, or often below, former competitive rates. In later years the policy seems to have changed in many instances and the "capitalistic monopolist" has apparently found it wiser not to attempt to make his monopoly complete, but rather to remain content with market leadership and fairly steady high profits, without attempting to crush his well-equipped competitors. For more than nine of the first twelve years of its existence, the American Sugar Refining Company (with capital stock not a little watered, if one judges on the basis of cost of reproduction and running cash capital) was able to keep its margin between raw and refined sugar considerably above the former competitive margin, and paid dividends of 7 per cent. on its preferred stock and 12 on its common stock, while laying up a surplus. These facts seem to show that its large capital did secure more than former competitive prices, and that it had certain monopolistic power. The nature of competition between larger competitors as compared with that among small rivals is considered at length in the chapter on Prices; but in this case it is well illustrated. After its earlier experiences new competitors kept arising from time to time and hostile legislation and court action checked the company's aggressiveness. Its proportion of the total output of refined sugar lessened. In 1907 it fell below 50 per cent. and has since declined still further until in the year 1915 its proportion was only 34 per cent. These facts show how practically impossible it is under present conditions in the United States to secure monopoly that is permanent without a patent or a legal monopoly.

The assertion made that the Sugar Combination also

received special favors from the railroads was long denied, but aside from that, the undeniable facts regarding the increase in the margin between raw and refined sugar, in the earlier years, as shown in the chapter on Prices, furnish sufficient cause for the high dividends. As late, however, as 1907 the company pleaded guilty to receiving rebates on railroads and paid a fine of $50,000. A somewhat similar assertion may be made regarding the Standard Oil Company. It was doubtless true that in earlier years it received great favors from the railroads. It is possible that it has received special favors from the railroads at times since, but though there was an apparent case or two of such favors in the form of rate discriminations they were advantages, perfectly legal in character coming directly from its large capital, which enabled it so to locate refineries and supply markets that it has an advantage over its competitors in certain territories. The other advantages claimed for the capitalistic monopoly, in crushing competitors by local cuts in prices, in transportation, and in other ways that until lately have been perfectly legal and normal in their nature, however unjust they may be, certainly seem in themselves sufficient to explain part at any rate of its high profits.

Similar experiences are found in the cases of other combinations of lesser note; and yet it ought to be repeated that in many cases, especially in earlier years, combinations have overreached and have paid the penalty of trying to secure exorbitant profits. More experience is needed to teach most of them the art of permanent monopoly so self-controlled that it is content with strong market leadership without ex-

tinguishing its rivals. When this art is learned, less careful legal control by society will be needed, since it will be found that in the long run it is the policy that will pay the combination as well as benefit society.

Even as regards the special discriminating favors that are mentioned by those who believe that there is no such thing as capitalistic monopoly, it might readily enough be claimed that these very special favors are secured only by virtue of the power of large capital. However, that would be a technical claim which need not be made.

Possibly the chief influence in the long run in promoting combinations of capital, as well as their most far-reaching effect in the earlier days of the Trusts, was the element of personal ambition which is fostered by monopoly. There can be no doubt that, in the case of the larger industrial combinations, the belief on the part of the managers that a virtual monopoly could be secured was a powerful element toward bringing about their formation. The pride of power, and the pleasure which comes from the exercise of great power, are in themselves exceedingly attractive to strong men. As one with political aspirations will sacrifice much and take many risks for the sake of securing political preferment in order that he may in this way rule his fellows, so a successful organizer of business derives keen satisfaction from feeling that he alone is practically directing the destinies of a great people, so far as his one line of business is concerned. Mr. Havemeyer said that his ambition was to refine the sugar of the American people. Mr. Gates asserted that it was the ambition of the organizers of the American Steel and Wire

Company to control the wire output of the world. One cannot say that these ambitions are not as worthy as those of politicians, and as natural. No one can question that these elements of personal satisfaction and pride are most powerful factors in all lines of social intercourse, and this pride could not be gratified in business short of the belief on the part of these men that they can secure a practical monopoly. This ambition will not be gratified by the control of merely a very large business. Napoleon was not content to be the head of a great state. His ambition would brook no rival. May not the ambition of a sugar king or a petroleum magnate well be of like imperial nature, though in a more restricted field? And yet, in the case of Napoleon and possibly of other potentates of later date the event showed that ambition had overleaped itself. Likewise the chief successes of later years have seemed to rest with those who have been content with less than world domination and who have been ready to accept merely strong leadership.

Connected with this belief in the power and desirability of great leadership, if not monopoly, within the home market is belief in the ability of the great combination to enter new, and especially foreign markets. Much more capital is required to introduce into a foreign market a special product than would be required for the extension of the sale of that product within one's home country. The power of great capital thus enables the combination to extend its trade as could otherwise not be done, although this power by no means necessarily implies monopoly. The American Tobacco Company, followed by its successor in that

field, the British-American Tobacco Co., developed a great market in Japan, later assumed by the Japanese Government, in India, China, and throughout the Far East. In some instances even, it is said, it was forced practically to create the taste for tobacco and to break down religious scruples in order to introduce its product. One may question the value to those peoples of this "educated taste"; one cannot question the skill and power needed to accomplish the result. The Standard Oil Company, the International Harvester Company, the United States Steel Corporation, have pushed their products into practically all the markets of the world, in some cases even winning control of European domestic markets against the violent opposition of legislators as well as business rivals. In no case could these industries have so expanded without the possession of very large capital; and this ability to manage the foreign market in conjunction with the home market, is beyond doubt an advantage of the large organization which the small competitor does not possess. It remains to be seen whether coöperation for work in the foreign field among smaller competitors at home, which is so ardently advocated in some quarters, can successfully enter the foreign field in competition with the great combinations. It may perhaps be safely assumed that such coöperation will not succeed unless it is close enough to secure completely unified permanent management. In that event it becomes an industrial combination or a Trust. The possession of a secure foreign market gives the large manufacturer still further power in handling the home market so that it strengthens his industrial leadership.

Granting, then, all that can be said with reference to the special advantages that come from legal monopolies and from natural monopolies, it still seems reasonable to believe that without them what must, under the present usage of terms, be called monopoly, does, through the power of capital, exist, temporarily, at least. Apparently it may exist permanently, exerting, if it wishes, some of the power exercised by other monopolies, and needing like them the restraining hand of the State through courts and legislatures to prevent abuse. Experience has shown, however, that monopoly's wiser plan is not to attempt to abuse its power, but to be content with industrial and market leadership.

The term "capitalistic monopoly" has been given to this kind of business organization. For the present it seems well to make use of that term, keeping in mind the strict limitations of the powers of such organizations.

CHAPTER VI

PROMOTER AND FINANCIER

IF SEVERAL different firms or corporations are to combine into one, or if a large corporation is to be organized, it is ordinarily true that some individual must undertake the task of carrying on the negotiations among the different establishments or individuals concerned, of providing a plan of organization, and of persuading the different individual owners that it is to their advantage to enter into the combination on the terms suggested. This persuasive optimist who can succeed in convincing each that it is for his interest to join the organization is the promoter.

In the organization of many of our later industrial combinations, the large pay of the promoter has come directly or indirectly through the issuance of watered stock. To see fully the common practices in connection with such work, we may profitably sketch the more usual processes and forms of organization of corporations.

As some of the terms* used in this chapter are some-

*A bond is an interest bearing certificate of debt issued usually by a corporation, municipality, or government. Bonds may either be registered, transferable only on the books of the company, or unregistered, when both interest coupons and the bond itself are payable to the holder or bearer.

Stock is capital represented by a given number of shares of a corporate company, usually, but not always, of a fixed nominal value per share.

Original capital is known as common stock and dividends on it are subordinate to those on preferred stock. Preferred stock has usually a preference over the common stock in that a fixed rate of interest must be paid on it before the common

what technical it may be well to summarize brief definitions of the main expressions so as to make the meaning entirely clear to all readers:

A certificate of stock is essentially a receipt for a certain amount of capital paid into a company to enable it to carry on business. This capital is divided into shares, usually of $100 each, and the certificates of stock stand for a certain number of shares. It is ordinarily supposed that the certificates of stock represent capital paid in cash or an equivalent of cash, so that ten shares of stock would represent $1,000 in cash or an equivalent of cash. If stock is issued only for cash, there is little likelihood of injustice being done, or of either the investors in the stocks or those who are doing business with the company being deceived with reference to the terms on which the business is organized.

In most cases, however, when a company is organized, considerable amounts of property need to be purchased, either land, or buildings, or tools, or property in some other form, adapted for carrying on the business. In many cases persons who wish to invest their money in the organization are themselves the owners of this desired property. In consequence, it is a matter of convenience that shares be issued directly or indirectly for this property instead of for cash. Sometimes to avoid the appearance of issuing stock for property,

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stock receives any dividend. It has also a prior claim on the assets in case of dissolution of the company. Often its dividends are cumulative, if unpaid when due, so that all back dividends on preferred stock must be paid before any can be paid on common stock.

An underwriter is a corporate body or human person, usually a bank, which guarantees the sale of issues of stocks, bonds, and the like at a certain price agreed upon.

A promoter is a person who especially assists (by securing capital or otherwise) in starting or forwarding (promoting) a financial, industrial, or commercial enterprise, as a joint stock company, or one who makes this his business.

the managers of the company agree upon a price in stock at par value at which a special piece of property will be purchased. The managers then go through the form of handing their checks to the property owners for the sum agreed upon, and receiving in turn the checks for an equal amount of the owners of the property for stock issued then and there. In one case certified checks of a leading Trust company were used to pay for the properties—a loan for the amount for one day having been made for that purpose—and the checks of the mill-owners paid the loan the next day. If the property is tangible, such as land or buildings, and the estimate placed upon its value is conservative and fair, there seems to be no reason why the shares should not be issued directly for this property, if there were no danger of injury to any person.

Likewise, if the property is intangible, as a patent or a copyright, or possibly the good-will of a business, its value may be as great as that of land or buildings. Naturally the inventor and the promoter are hopeful of large profits, and will therefore set a high price upon the patent. If, as is often the case, the invention proves a successful one, the patent may prove to be worth more capital than was estimated at the beginning, and shares of stock therefore issued in payment for it will be worth more than their par value in cash. On the other hand, if the undertaking proves a failure, there will be no tangible property left against which the shares were issued, and the shares themselves may become valueless. In a case like this, where the organization is founded chiefly on hope, there are great opportunities, and the temptations are also very great, to

issue stock to large amounts, even though the hopes are not well founded.

It may be that in other cases the services of some individual peculiarly skilled in the business may be taken in lieu of cash. Under the partnership form of doing business, it is not infrequently the case that one partner contributes capital in the form of cash or tangible property equivalent to cash, while another partner contributes his skill and time in the form of services, the two partners dividing the profits equally. Likewise in the formation of a corporation: one individual, whose knowledge or skill or services are thought to be peculiarly valuable to the business, may have allotted to him in the organization of the company a certain number of shares of stock for the services which he is to perform for the organization in the future; or, if he is a promoter whose work has been of special service in putting the organization into a situation to earn large profits, stock may be issued to him in payment for services already performed. Some of our states forbid the issuance of stock for services; others permit it. It is readily seen how a skilful promoter, who may have succeeded in bringing together a large company whose profits, on account, it may be, of some monopolistic feature, bid fair to be large, may readily assume that his services have been of great value to the company, and receive a large amount of stock in consequence. Here again, however, the stock is issued largely on hope, and its value may partake of the fleeting nature of its foundation.

If a business is so profitable that it can earn considerably more than the rate of interest common in the lo-

cality upon well-secured loans, it may be wise for its managers to borrow money to enlarge the business. If a firm or corporation can earn 10 to 20 per cent. upon capital invested, it is surely profitable for it to increase business so long as these earnings continue. Even though a half of the capital required to furnish these earnings may have been borrowed at 6 per cent., there has been a net gain of 4 to 14 per cent. When the expansion of a business, or even perhaps its present success, depends, therefore, upon the handling of comparatively large sums of money, it is the usual custom to borrow a considerable portion of this capital. Indeed it is not unusual for public service corporations, such as railroads, gas companies, and other like institutions, which possess some natural monopoly, or which have the grant of some franchise that practically gives a monopoly of a certain line of business, to borrow enough capital to pay the entire cost of building the plant, whether railroad or factory. If the establishment can pay anything more than the regular interest on the debt thus created, all of the surplus may go as profits to the stockholders, the persons in whom the legal title of the road rests. It is not at all uncommon for our street railways or our railroads to be in debt—that is, to be bonded—to an amount fully equal to the entire cost of the road and its equipment. It is customary also in such cases for stock to be issued to an amount at least equal to the cost of building, so that the railroad thus built, which can pay the interest on its bonds and pay dividends on its stock, gives to the first holders of the stock a pure profit to the extent of whatever the money value of the stock may come to,

as well as a regular annual profit of whatever dividends may be paid. This issuance of stock beyond the cost value of the road is, of course, what is generally known as stock watering.

The new industrial combinations, which are believed by many of their organizers and promoters to be able so to control the conditions of the business that they may possess a virtual monopoly, are also in many cases in a position to borrow in some form or other a large part of the capital needed for the creation and carrying on of the business, and to leave their stock partly or wholly as a bonus in the hands of those who have organized the company, to draw dividends upon, provided the company can earn more than the interest upon its bonds and a small amortization fund, with which gradually to pay off the face value of the bonds.

Under the laws of our states, of course, a firm or corporation which fails to pay the interest on its debts is adjudged insolvent, and is placed in the hands of a representative of its creditors, to be managed in their interest. If a business is more or less speculative in its nature and is heavily indebted, there is always danger that in some period of depression it may fail to pay interest on its bonds, and may thus have the management taken out of the hands of its directors. In consequence of this danger, it has been customary of late years for those organizing the somewhat speculative industrial combinations to issue certain classes of preferred stock in lieu of bonds. For example, a company, the cost value of whose plants was not less than $500,000 might issue preferred stock, to the extent of $500,000, representing substantially cash to that amount. If the busi-

ness were fairly well managed, it might be expected that there would be no trouble whatever in paying some interest—say 6 or 7 per cent.—upon this amount of capital. Persons buying the preferred stock might therefore be assured that their investment would be substantially as safe as if the corporation had borrowed that much money and issued bonds in its stead. In case the company should fail in any one year to earn the full amount of the 6 or 7 per cent. interest mentioned as due the holders of preferred stock before any profits are paid to holders of the common stock, the company would not be adjudged bankrupt, as in the case of the issuance of bonds, but the management of the property would still remain in the hands of the stockholders through their directors as before.

In some instances the preferred stockholders are given no right to vote for the election of directors and thus have no voice in the management of the company so long as the dividends agreed upon are paid, but receive that right of representation in case of any default in payment. In such cases the preferred stock becomes more like a bond in its character, though even in this case the failure to pay dividends on the preferred stock would not render the company legally bankrupt and thus place its management in the hands of the courts.

The preferred stock is sometimes given the still further advantage of being cumulative—that is, if in any year or series of years the company fails to pay the dividends mentioned in the conditions upon which the stock is issued, say the 6 or 7 per cent., the amount falling short remains as a charge upon the future profits

of the organization, and no dividends can be paid to the holders of the common stock until after this charge has been met. In this way preferred stock becomes substantially as secure in all particulars as bonds, unless there should be a later bond issue. Practically the only difference is that in the case of the failure of the preferred stock to secure its dividends, the management of the company remains in the hands of the Board of Directors; whereas in the case of failure to pay interest on bonds, the management of the company is placed in the hands of a receiver, appointed by the court to which the bondholders as creditors have applied for relief.

As has been intimated, a large proportion of the new industrial combinations issue preferred stock instead of bonds, the preferred stock often representing what is supposed to be the fair cash value of the plants themselves. For each share of preferred stock there is also frequently issued to the holder thereof one or more shares of common stock as a bonus, which may fairly be considered "water," and which takes the place of the common stock so often issued by public service corporations when the cost of building has been substantially raised through the selling of bonds. If the company should be successful in making large profits, dividends will be paid on the common stock in proportion to its degree of success. If the company is less successful, while holders of the common stock will receive no dividends, they will still have a voice in the management or possibly indeed the entire management of the business of the corporation, and the fluctuating chances for future business and future profits will give

the common stock a more or less range of value as time goes on.

It is largely through his skill in arranging all these details of organization and of issuance of stock that the promoter usually gets his profit. In most cases, as it has been his special labor to bring together the corporation or the combination of corporations whose profits are largely a matter for the future to determine, his pay is justly enough given him in part or altogether in the more speculative securities of the company organized—that is, in common stock. For example, testimony given before the United States Industrial Commission seemed to show that in the organization of the Standard Distilling and Distributing Company, for each $100,000 cash value that was secured, in the form of either cash or tangible property, there was issued to the promoter $150,000 in common stock. In addition to this, $100,000 in preferred stock and $100,000 in common stock were issued to the seller of the property who entered into the combination, and $100,000 preferred and $150,000 of common stock were issued to the underwriters, the nature of whose services will be spoken of hereafter. It will be noted that each $100,000 cash valued property was presumed, if dividends were to be paid, to earn interest on $600,000, and the event soon showed that the calculations or speculations were not well justified. Would the attempt to do this put prices up, especially if the organization had some monopolistic power?

An account of the organization of the American Tin Plate Company will show one way in which a promoter may receive his pay. Most of the manufacturers of

tin plate in the United States, feeling severely the lessening of profits that came from competition and depression in business, thought it wise to organize a combination which should practically control the market. To that end they asked Judge William H. Moore of Chicago, to aid them. He visited the different tin plate manufacturers and secured an option of purchase for cash at a fixed sum upon the plants of each one of the firms or corporations which contemplated entering the combination. After these options had been secured, Judge Moore organized a company with an authorized capitalization of $50,000,000, of which about $46,000,000 were later issued. For this capital stock there were to be furnished to the company some $4,000,000 in cash as running capital and the plants of all of the companies which entered into the agreement. It was understood that the cash options on the plants amounted to something less than $18,000,000, although as the contract was made with each establishment separately, and as each one of the options was a purely private matter between the promoter and the person selling, it was not publicly known exactly what sum was agreed upon for the value of each separate plant.

It was understood that in most cases the choice was given to each company to receive for its plants either cash or preferred stock, of which the par value should be an equal amount with that of the cash option, together with a like amount of common stock as a bonus. In this way it was supposed that about $18,000,000 of preferred stock and the same amount of common stock were issued, as against the properties and cash, whereas $10,000,000 more of common stock went to the

promoter to pay him for his services and for all of the expenses of getting the organization together. It was, of course, necessary that organization fees, lawyers' fees, etc., be paid. It was also probably true that in order to raise the necessary cash certain commissions had to be paid to bankers and others who advanced it. It might have been also true that, instead of the preferred and common stock being taken on the terms suggested before, better terms in certain instances had to be given, and it is even possible that in other instances less favorable terms may have been accepted. Inasmuch, however, as at the time that the company was organized one share of preferred and one share of common stock together sold for considerably more than $100, it seems fair to assume that the promoter had the opportunity of making very large profits indeed out of the $10,000,000 in common stock assigned him for covering the cost of formation and for his pay for services rendered. It will be noted that aside from this $10,000,000, he had the opportunity of making much more if he could make close enough bargains with those who entered into the organization so as to buy their plants at less than the $18,000,000, which seems to have been generally agreed upon as the value of the plants with the cash capital; whereas, on the other hand, if he could not secure them for that sum, his profits would be correspondingly diminished.

With the promoter ordinarily works the "financier" or the underwriter. If the company is to be a success, it is necessary that the stock be sold in order that the needed capital in the form of either plants or cash, or both, be secured to carry on the business. Private

bankers are ordinarily chosen to negotiate the sale of stocks and bonds, and very frequently they are persuaded also for a consideration more or less large to underwrite the stock. By this "underwriting" is ordinarily meant an agreement to secure the sale, at a named price, of a certain amount of the stock of the company. If persons not connected with the company or the banker concerned purchase all of the stock under the agreement at a price as high as that named in the contract, the banker has no further responsibility. If, on the other hand, all has not been sold at the time agreed upon, the banker takes the remainder at the rate mentioned and furnishes the cash to pay for it. In that case, his profits or losses will depend upon the price at which he may be able thereafter to sell the stock; or in case he holds it, upon the dividends that may be paid by the company in its regular course of business. It is commonly believed that the sums asked by the underwriter are as high or higher than those of the promoter. A banker agreeing to furnish millions of dollars to a company in order to enable it to enter upon a line of business in the way in which its promoters prefer, often takes, of course, considerable risk, and will wish corresponding pay. The pay of the underwriters in the organization of the Standard Distilling and Distributing Company has already been noted. High officers in some of the industrial combinations have stated that the cost of organization, including the pay of the promoter and financier, amounts often to from 20 to 40 per cent. of the total amount of stock issued, dividends having therefore, if possible, to be paid upon this amount of stock at least in addition

to that which represents the cost value of the plants or the amounts paid for them.

Not infrequently the work of the financier and that of the promoter are combined, the profits depending upon the terms at which the stocks are bought and sold. The case of the Distilling Company of America is one in point. Its authorized capital was $55,000,000 of 7 per cent. cumulative preferred stock, and $70,000,000 of common stock. Of this total sum, $31,250,000 of preferred stock and $46,250,000 of common stock were put into the hands of the organizers or promoters of the combination for the purpose of bringing about the organization. The company was incorporated to purchase and hold the stocks of four existing companies, each in itself a combination, and to secure control of certain rye distilleries. The organizers or promoters were to use the stocks placed in their hands to exchange in certain named proportions for the entire stock of each of the existing combinations, to furnish also $1,500,000 in cash for working capital, and to buy two rye distilleries owned by the Hannis Distilling Company and a rye distillery in St. Paul. A large proportion of the stocks of these different companies were as a matter of fact secured, considerably more than 90 per cent. in each case. It was testified that the rye distilleries cost some $2,000,000. If the entire stocks of all of the four companies had been exchanged at the rates agreed upon, there would have remained in the hands of the organizers $10,710,000 of preferred and $13,360,000 of common stock, for which they were to secure the $3,500,000 needed for purchasing the rye distilleries and furnishing the $1,500,000 to be used for working

capital. At the rate at which the stocks of the new company sold very soon after its organization, these stocks would have given a net profit to the promoters and financiers, had they been able to sell them promptly, of from $3,000,000 to $4,000,000 for their services; but one must remember, of course, that the effect on the market of an attempt to sell these promptly would probably have been very depressing. The speculative nature of such a business is readily seen, when one notes that the stocks declined rapidly in value, so that if the organizers had them left in their hands six months later, they would have barely sufficed to furnish the $3,500,000 necessary to enable them to fulfil their contract.

There can be little doubt that many of the promoters and financiers have in the past agreed to aid in the organization of industrial combinations with the hope of securing large profits by the sale of stocks without themselves taking any material interest in the business. This method of furthering combinations has, beyond question, proved one of the greatest evils connected with them, inasmuch as it has given a decidedly speculative turn to industrial stocks, such as was found in the market for railroad stocks and bonds fifteen or twenty years ago.

Those companies that have been organized with a fair degree of conservatism have often assumed the debts of the constituent companies or have compelled them to pay off their debts before the parent company began business. The effect of this policy in large sections of the country has been to relieve many small banks of the burden of carrying, with considerable risk

at times, the business of these companies. At the same time it has deprived many of these small banks of their best customers. On the other hand, many of the large city banks, from underwriting or accepting as collateral the stocks of the new parent companies, at times found themselves carrying a heavy burden which it was very difficult to shift. They were carrying to their great discomfort and at times with peril a mass of "undigested securities." The instability of these securities, with the large numbers of them thrown upon the market, has tended of late years to make bankers much more conservative in accepting the stocks as collateral for loans, or in attempting to place the stocks upon the market; so that the worst period of such speculative organization in all probability passed with the early years of the great Trust organizations (say between 1885 and 1905).

Perhaps the worst feature from the social point of view, connected with this method of promotion of industrial companies, was the practice (a practice commonly stated and believed to be exceedingly common, although rarely proved) of securing the influence of bank officials—presidents, cashiers, or directors—through the payment to themselves individually of large amounts of stocks or even of cash, to persuade their banks to accept these securities as collateral on loans, or to underwrite the stocks and thus furnish cash for the companies. It seems most unfortunately to be true that in many cases officials of banks and trust companies failed to realize to the full the nature of their trusteeship as it concerns their stockholders and depositors. Nor can we overlook the indirect influence of

such acts by these prominent financiers. The mere fact that a prominent bank or a successful capitalist is willing to invest in the stock of a company is enough to lead hundreds of small investors to follow, often to their injury. And beyond the financial evil, in the long run, is to be feared most of all the lowering of moral tone in business circles if such practices were to continue. The essence of successful business as well as of social and political success of the highest type is faithfulness to a trust, a keen sense of honor. This evil of speculation, coming from the work of the promoter and financier, which has led to the substantial bribery of bank officials and to excessive stock watering on the part of the industrial combinations, is to be counted among the great evils which have attended their organization. They should be so conservatively capitalized and managed that their stocks will prove as safe an investment as farm mortgages, and a far more convenient one for the man of small means.

Happily the experiences of the last few years has led to much greater conservatism in both promoting and underwriting. Banks and investors are more cautious and legislators and courts have shown an inclination to be more severe. The experiences and laws of foreign countries—especially Great Britain and Germany —in which more careful supervision of issues of stock is maintained have also clearly had a beneficial effect.

CHAPTER VII

THE BASIS OF CAPITALIZATION

SO MUCH has been said of late years with reference to the evils of over-capitalization and of fraudulent practices in connection with stock watering, that it may be worth while to consider briefly the actual and the proper basis of capitalization of industries. It is ordinarily assumed in discussion by those who are opposed to what is generally called "stock watering," that stock ought to be issued for cash or for what is called the "actual cash value" of the property taken. It is generally assumed that the actual cash value will represent fairly well the cost of reproduction of the properties in present condition together with needed running capital in the form of cash on hand. Such an issuance of stock in an ordinary manufacturing business, under conditions of fair competition, will give dividends in the long run probably not materially different from, but perhaps somewhat higher than, the usual rate of interest in the community.

It seems to have been the purpose of the corporation law of Massachusetts, and of some other states and countries, to secure capitalization on this basis. The law passed by Congress for Puerto Rico after its annexation, took this position, and shows how conservative Congress tried to make its action on the subject. In Massachusetts, not merely must the directors or organ-

izers of a corporation, part of whose stock is issued against property, make oath that the property has been received at its actual cash value, and that the stock is issued at this rate at par, but the Commissioner of Corporations of the state must also certify that he is satisfied that this is the case. Let us note just what this means. This is the capitalization of the value of the plant and running capital, not necessarily the capitalization of the value of the business as a going concern.

On the other hand, most business men are of the opinion that the value of any property depends upon its earning capacity, its value as "a going concern," and that it is wise and just to determine the amount of the stock of a corporation upon that basis. In the case of corporations, such as those mentioned in the paragraph above, the probability is that the reproduction value of the establishments would correspond closely with the capitalization of their earning capacity at current interest rates. On the other hand, it must be remembered that much higher rates of profit can often be made, either (*a*) in times of more than usual business prosperity, or (*b*) under exceptionally skilful management, or (*c*) with the possession of considerable monopolistic power, from whatever source derived, whether the possession of patents, or of exceptional good-will, or of a very large capital. Mr. Bryan's early dictum that "only in the case of monopoly can you secure dividends upon stock that does not represent money invested" is not always strictly accurate; but it is so generally true that it ought carefully to be noted. The times of prosperity when this can be done without monopoly may be fleeting. The exceptional skill or

the monopolistic power are likely to endure for a longer season. Under those circumstances, with any of these advantages, the corporation might readily pay dividends of the usual rate of interest on a capitalization twice or three times the reproduction cash value of the plants.

Attention is frequently called to the case of a newspaper with a tangible property of, say, $100,000. Such a newspaper, ably edited, with a strong constituency of subscribers and a large advertising patronage, might readily pay good dividends on $1,000,000 or more. Why should the capitalization not be placed at $1,000,000, regardless of what the plant might cost? The earning capacity may be due largely to the skill of the editor, or to the fact of connection with some political party, or to the peculiar business skill of its advertising manager, or to the good-will gained through many years of skilful catering to the public taste. Why, it is asked, should not the capitalization be made upon its earning capacity rather than with reference to the cost of the plant?

A similar line of reasoning may be followed in the case of companies organized to exploit a patent to develop an exceptional opportunity as the ownership of an exclusive franchise or a rare waterpower. In these cases, of course, the element of monopoly enters directly. One rarely thinks of the talent of a great editor or of an exceptionally trained man in any field as a monopoly. Yet it may have many of the same business elements.

Most business men, as has been intimated, prefer capitalization on the basis of earning capacity. In the first place, if the dividends declared seem to be at about

the normal rate of interest, it conceals the actual state of the business from all persons not so situated that they either know the details of the business of this special establishment, or know that kind of business so well that they may readily judge the profits from external signs. This concealment of large profits lessens the temptation to rivals to enter the business, and lessens also the danger of popular disapproval, which is often expressed against those who make large profits upon capital invested, even though such profits may have been made more by the special individual skill of the manager than by the advantage that comes from the possession of capital. A prominent stockholder in a large gas company expressed the fear that it might be necessary soon to lower the price of his gas. The profits were becoming too large to please the public, and it seemed difficult to find an excuse for issuing more stock, though such excuses in the past had been found and for a time had served to conceal the rapidly increasing profits. A gas company, it should be remembered, too, is a public service corporation based upon a municipal franchise that is probably monopolistic in terms.

Again, a large capitalization is more advantageous, provided the stockholders wish to sell. If in any line of securities, for example, the stock of corporations that regularly pay dividends at 6 per cent. stands at par, those of similar nature and class of which the dividends are regularly 3 per cent. will usually stand at more than 50. People seem to like to deal in large figures, and there is also a greater element of speculation present perhaps in the latter case, though either motive is

probably largely an unconscious one. With the speculative turn of mind goes the desire to get something for nothing, or the bargain counter attraction of cheap buying. A $100 stock listed at $50, seems at least to cheap and a bargain. But, whatever the reasons, because the stocks will sell for more usually, a large capitalization is often desired, even by conservative business men.

Still more is this the case if the business is speculative in its nature. Doubtless the stocks of many industries which have been largely overcapitalized are more pleasing to speculators on that account. They may not pay dividends; it cannot be expected that they will pay dividends in the near future; but on account of the instability of the business, their fluctuations up and down are more readily affected by rumors or by other slight influences on the stock market—and speculation flourishes on fluctuations.

It is claimed by many that the public is little affected by stock watering, and has little interest in the basis of capitalization. If the capitalization is high, the value of the stock will be correspondingly low, and vice versa. Business men will invest their money, it is thought, on the basis of actual values, as shown by earning capacity, regardless of the par value of the stocks, and neither prices nor investors are materially affected, whatever the basis of capitalization. After a business has been long established and its methods of management are well known, this contention is largely true. On the other hand, when new corporations are organized, and only those who are closely connected with the management know on what terms properties are purchased

for which stock is issued, there is great opportunity for deception. Even a public statement of actual earnings of different corporations for a series of years past may be so arranged that the results will be decidedly misleading. Average profits over a period of five years might well be 10 per cent., when if a period of seven years were taken the average would be not more than five. Even the profits of the last two years might be nil. The ordinary investor, who has not had the opportunity of studying the details of organization, is unable to judge.

Even capitalization at the reproduction value of the establishment if one includes good-will at all may be as misleading in many ways as capitalization on supposed earning capacity, because unskilful management or a changing state of the market may either double its value or halve it within a year or two, if we are to take as the basis of value what it might actually bring in the market, which depends again, as has been intimated, on its earning capacity. Even the reproduction values of physical plants are subject to great fluctuation with changing invention and fluctuating market and labor conditions, while it is impossible to estimate the reproduction value of good-will, in practically all cases.

There can be no doubt, either, that a high capitalization brings pressure to bear upon officers of corporations to raise prices of their products. Payment of dividends is likely to seem their first duty, and they push prices as high as the market will bear. If the business possesses any element of monopoly, however well justified, it is likely to lead to high prices—not neces-

sarily unjust prices. But in far too many cases the pressure for dividends has led to actual fraud and the illegal act of paying dividends when they have not been earned out of funds that should have been issued for other purposes such as construction, repairs, or even out of capital.

The only just method of preventing the evils which are likely to come through the capitalization of any establishment of which the shares are sold to the public, is to place clearly and fully before all investors, at the time of the organization, the plan of organization itself, the amounts actually allowed for all and each of the properties taken into the establishment, with as complete information as possible regarding these properties, so that a fair judgment can be made regarding both their cost and their earning capacity. In like manner the condition of the business from year to year must be impartially set before the public. From the statements made at the beginning, the value of its stock will in the main be based upon its fair probable earning capacity, while the changing conditions of the business from year to year being made fully known would enable the different parties concerned to judge fairly the changing values.

The chief evils of our over-capitalization in recent years have appeared in those organizations that have issued stock far beyond any reasonable likelihood of dividends on the common stock, short of monopoly, and whose promoters have been primarily, not business men, but gamblers.

A method to avoid the chief evils connected with capitalization by providing that shares of stock, repre-

senting dollars as their par value, should not be issued, but that a plan first reported by a committee of the New York State Bar Association and later adopted as a permissive, though not a compulsory plan of stock issue in New York, should be followed. This, it was thought, would afford a remedy for all these evils. The plan is as follows:

"To permit the formation of a distinct class of business stock corporations, whose capital stock may be issued as representing proportional parts of the whole capital without any nominal or money value.

"The effect of such amendment would be to provide for the measurement of the interest or shares of the members of such a corporation by a statement of proportion, as in case of the part owners of a ship, and not by an arbitrary assignment of money value, which is delusive in the case of every corporation whose capital stock has a market value either more or less than its nominal par value.

"Such an amendment, though somewhat radical, is not altogether novel. It embodies a principle adopted in corporation laws in Germany.

"It would relieve any possibility of injury to the public from misleading representations as to the money value of corporate stock, and would also relieve from embarrassment conscientious corporate officers often compelled to deal with legal fiction as to which they have no personal knowledge, as though it were a reality within their own observation."*

The suggestion is valuable and would apparently

*Proceedings of New York State Bar Association, January, 1892, p. 148. New York Laws of 1912, chap. 351, Stock Corporation Law, sec. 13.

prove effective; but there is no general interest in a change, and it is probably, for the present at least, not practicable for use on an extended scale.

The effect of over-capitalization upon prices will be discussed briefly in a later chapter.

CHAPTER VIII

METHODS OF ORGANIZATION AND MANAGEMENT

BEFORE the compact combinations of the present day were known, various forms of specific agreements among independent corporations and individual competitors were common, such agreements often being called pools, even when the earnings of the different companies were not put into one common stock from which profits were to be distributed.*

For some years before the organization of the Whiskey Trust, competition had been very fierce among the different distillers, and agreements were usually made from year to year which fixed the amount that each distiller should produce during the year. At other times, under agreement, an assessment was levied which each distiller should pay upon each bushel of corn mashed. From the fund thus raised some distillers were paid to export goods at a loss, and thus, by relieving the home market of its surplus, make sufficient

*In a pool properly so called all the companies put their net earnings, or any other special funds agreed upon, which are then expended for some common purpose or distributed according to some special rule. In use the word was greatly extended in meaning. As in the case cited below, each distiller paid into a common fund a certain amount per bushel of corn mashed. From this fund then were refunded to the exporters the losses made by them when their goods were sold abroad at a loss in order to enable the others to maintain prices in the home market. This was really a pool. But the same word was used to characterize a mere agreement to restrict the output, or one to sell at a common price agreed upon, or one to divide the territory among different sellers, the latter forms of agreement not being pools at all in the proper use of the word, but merely agreements for what was supposed to be the common good.

provision for selling the remainder of the domestic production at a remunerative price. These so-called pools were not stable. Ordinarily, within a year, some one of the parties to the agreement would be discovered distilling more than his proportion of the normal output, or selling at a price below that agreed upon, and the result would be a break in the pool.

Agreements for fixing the price of the product or for dividing territory were perhaps most common. A noteworthy case is that of the Addyston Pipe Company,* in which the different parties agreed not to enter into competition with one another. The contract was to be carried out in the following way: a committee consisting of a representative from each corporation entering into the agreement set the price for each job of work, and the corporation that offered to the combination the largest bonus for the job, secured it, the others putting in higher bids to make an apparent competition. After payment of expenses the bonus was then divided among the remaining corporations. It will be seen that, although in this agreement there was no uniform fixing of price or of profits, competition was done away with, and the agreement may fairly be considered as one tending to create a monopoly, or, at any rate, to bring about all the evil effects of a monopoly and to oppress the consumers.

An agreement of a quite different nature was formed some years ago among coal dealers in one of our cities. A committee of several of the leading dealers determine the price at which coal shall be sold by all wholesalers

*United States v. Addyston Pipe and Steel Co., *et al.* 78 Fed. 712, 85 Fed. 271, 175 U. S. 211.

and retailers. They also keep a supervision of the trade, seeing that full weight is given, that the quality of coal is exactly as represented, and that the consumers are protected against dishonest dealers as well as the dealers against excessive competition. If any dealer cuts the price to any of his consumers, he is heavily fined by the central committee. If he refuses to pay the fine, an agreement with the mines stops his securing a sufficient supply of coal to meet the needs of his customers. The initial cause of this agreement was said to be excessive competition. Some of the dealers, finding the prices so low that they could not make a profit, came to the conclusion that some others must be giving light weight. An investigation and a reweighing of several loads proved this. The combination was then formed, which may be said to exist primarily to protect the dealers and incidentally the consumers against this unfair kind of competition, which resulted to the detriment of both. Prices are fixed at a rate which is said to give only moderate profits to retailers and wholesalers, and fair prices to the consumers; while the consumers, as has been said, are secure against light-weight loads and poor quality of coal. It should be noted that those who fix the "fair" prices are interested parties; but experience may have shown them what is really wise and fair for all. All those dealers who are willing to conduct their business fairly and honorably at the rates fixed are allowed to make a reasonable profit. An experience of several years seems to justify this regulative combination which, through arrangements with mines, also has been able to do effective work.

Owing to the fact that ordinary pools and agreements of the kind mentioned above cannot usually be well enforced, the Standard Oil Company in 1882 organized the Standard Oil Trust, a form followed afterward by the so-called Whiskey Trust (the Distillers' and Cattle Feeders' Trust), and also by the Sugar Trust. The form of organization was substantially this: the stockholders of each of the separate companies assigned their stock to a certain number of trustees—seven or nine—giving thus an irrevocable power of attorney to these trustees to vote the stock as they saw fit. The trustees issued trust certificates to the stockholders in lieu of their assigned stock, and it was upon these certificates that profits were divided. All of the net earnings from all of the different members of the combination were put into a common treasury, and whether one of the manufacturing establishments was running or closed made no difference in the profits received by the stockholders of that special company. The trustees, by having in their hands the voting power of all of the separate corporations, of course elected whatever officers of the corporations they saw fit, and directed thus, as seemed to them wise, the affairs of each separate corporation.

The decision* of the New York Court of Appeals against the Sugar Trust, declaring that the act of a corporation in thus putting its stock into the hands of trustees and abdicating its own independent power of self-direction, was *ultra vires*, together with hostile legislation in other states and an apparent hostility of public

*The People of the State of New York v. The North River Sugar Refining Co., 121 N. Y., 582.

opinion, led the old Trusts to give up this form of organization and to reorganize. The Sugar Trust and the Whiskey Trust organized as individual corporations, the certificate holders becoming stockholders in a new corporation which owned all of the plants that had been owned by the individual corporations before the formation of the Trust. In both cases there was substantially no change in the management, the trustees of the former Trust becoming directors of the new corporation and the officers of the new corporation remaining substantially the same as the officers of the Trust. It was a change in name, a change in technical legal form, but no change as regards the practical management of the organization.

The Standard Oil Trust followed a different plan. It so happened that the nine trustees of the Trust owned a large majority of the Trust certificates. The Trust then dissolved into separate corporations, the holders of Trust certificates being given shares pro rata in each one of the twenty corporations into which the Trust was divided. Inasmuch, however, as the former trustees then owned a majority of the stock in each one of these twenty different corporations, they were enabled, without any formal organization among themselves, to direct the affairs of all these corporations in perfect harmony just as efficiently as they had done while acting as trustees and holders of a majority of the Trust certificates. Here, again, there was a change in form; but in this case, instead of the Trust becoming a single corporation, it became twenty corporations, the majority of the stock in each being held in the same few hands, and all of the corporations being managed in perfect harmony.

Later another change in this company of a different kind was made. One of the separate corporations, the New Jersey corporation, increased its stock, and so arranged that it could take control of the business of all of the different companies. The stocks of the separate companies were then exchanged gradually for the stock of the New Jersey corporation, and in the course of time this one corporation owned substantially all of the stocks of the twenty different corporations, so that the management thereafter became not merely practically one, but also technically and legally one under the directors of one corporation, they voting all the stock of each of the corporations. It is practically a return to the Trust form in all but name. This was the third period, that of the "holding" corporation. Again in 1911 as the result of a suit by the United States Government orders were given by the Supreme Court of the United States for the dissolution of the company not because its form as a holding company was illegal but because its practices which were enumerated in the decision had resulted in monopoly leading to undue restraint of trade, thus bringing it within the act. It was, therefore, broken into 38 companies which are not to have common directors or officers. The new companies have, however, largely common owners, and there seems still to be harmony of action. The profits and stocks have increased in value and no result of importance seems to have been reached.

A voting Trust, somewhat different from the kinds of Trusts described before, is also frequently found. In this form the Trust applies ordinarily only to one corporation. The holders of a majority of the stock of this

corporation put into the hands of some few trustees or possibly of a trust company the voting power of the stock, with specific instructions in certain instances as to the way in which this stock is to be voted and the affairs of the corporation carried on. In other cases the power is left to the trustees to carry on the business of the corporation as seems to them wise in accordance with a certain general line of policy laid down beforehand. The individual shareholders may then pledge or sell or dispose of their stock in whatever way seems to them best, but the voting power remains in the hands of the trustees. The purpose of such a voting Trust is, of course, to secure continuity of the policy, which, for whatever reason, the stockholders prefer. In some cases it may be that the majority of the stockholders of the original corporation think it desirable to devote all the earnings for a specific period to the improvement of the property instead of to the payment of dividends. It might be impossible to continue such a policy with a shifting body of stockholders, many of whom might wish to receive annual dividends. If, however, the stock can be transferred, but the voting power remain in a few hands, the policy can be carried out consistently for a fixed period of years.

In the case of the Pure Oil Company and other competitors of the Standard Oil Company, it was thought desirable to place the majority of the stock in the hands of a few trustees, because many stockholders felt that otherwise the Standard Oil Company might in time buy from individual stockholders a controlling number of shares, and thus succeed in absorbing more or less completely one of its chief rivals. It is claimed by the man-

agers of the Pure Oil Company that, owing to experience with some other companies, they had reason to believe that this was the purpose of the Standard Oil Company, and, in consequence, the Pure Oil Company had its stock placed in the hands of a voting Trust.

It will be noticed that in all of these cases the difference between this last form of voting Trust and the original Trust as seen in the case of the Sugar Trust, is that in the later cases provision is made simply for the management in a specific way of the affairs of some one corporation, whereas in the other case the intention of the Trust was to unite many different corporations under a single management and possibly in certain cases to secure a virtual if not a complete monopoly of the output.

After the dissolution of the old Trusts, the form of organization into one great corporation that should own the separate plants, became most common. Under that form, as, for example, in the case of the organization of the American Tin Plate Company or of the National Steel Company, each one of the separate corporations sold its plant outright to a new corporation and the original corporation then dissolved. When the combination was completed, there remained in existence only the one great corporation owning the plants that had belonged before to the separate corporations or to individual partnerships or owners. In no essential particular did the legal aspect of the single new corporation differ from that of the separate corporations which had preceded it.

The form of organization that seemed to have become most common in later years is that of the "holding

company," a form closely allied to the old Trust form in its essential character. In this case, when a combination is about to be perfected, a new corporation is formed whose purpose it is to buy up all, or at least a controlling share, of the stock of all of the separate corporations that are to come together. The different corporations then maintain their separate legal existence, but their stock is held by the one company. The officers of the great corporation having thus in their hands the control of the stock of all of the separate corporations, and voting that stock as they see fit, elect, of course, from year to year the directors of all of the corporations, and thus by this absolute control of the officers, direct the affairs of the different corporations. In some cases the "parent corporation" (so called, though born from the others), besides owning the stock of the individual corporations, owns also independently some properties of its own; but in other cases the parent corporation owns only the stock of the separate ones which have entered into the combination. The profits of the individual corporations are made, of course, as before; their dividends are declared; and these dividends are the chief source, or possibly the only source of profit of the parent corporation.

While this form of combination probably doubles the total capitalization in par of stocks, it should be noted that there is no increase in capital, and that there need be no stock watering—although there often has been. Neither need there be any more speculative securities created. This fact is often overlooked by those who are appalled by the huge capitalization of industries during the past few years. While new com-

panies have formed, old ones have died that they might live, or the constituent companies pay all their dividends to the parent company to enable it to pay its bills. In this way the earnings of the separate corporations are pooled as effectively as they were in the old Trust. The management is kept as effectively in the hands of the officers. The only difference seems to be a legal one. The parent corporation now owns the stock of the different corporations. In the other case a Board of Trustees held this stock in trust without themselves having any separate legal corporate organization. These new corporations are, it is true, amenable to the courts in a somewhat more direct way than were the former trustees; otherwise there seems to be no essential difference between these two forms of combination. In this later form of combination the constituent companies have their separate boards of directors, their separate officers, and carry on their business independently, managing it, however, under the general direction of the officers of the parent company. It follows of necessity that the work of all the different corporations is carried on harmoniously. Some one of them may have its plants closed for a time in order to suit the supply of product to the demand; on the other hand it may even be that prices will be fixed by the officers of the several companies; but in case of need they can always be readily controlled.

One of the leading decisions, the Northern Securities Co. case,* decided in 1904, made it clear that the holding company was not a form of organization that would necessarily produce monopoly or an unreasonable re-

*Northern Securities Co. v. U. S. 193 U. S. 197.

straint in trade. But, believing that the intent of the formation of that company was to hold the stocks of the Great Northern and the Northern Pacific Railways in order to prevent competition and thereby restrain trade, the Court declared the company illegal, ordered its certificates destroyed, and the stocks of the two roads distributed among the certificate holders *pro rata*. This may have satisfied the law, but the community of interests secured common action as before. As one observer expressed it, "under the Securities Company the management and rates were fixed by the direction of the Board of Directors, now they are fixed by the direction of Jim Hill." The principle of United Action holds under all these forms. The acts of legislation and courts have simply tended to drive the form of organization into a more closely merged amity of control, as the great companies more and more have the parent company build and buy separate plants instead of controlling them by agreements, trusts or common stockholding.

It should be noted that among these various forms of combinations there are two kinds, as was indicated earlier in Chapter II, essentially different in nature. The first is made up of companies that have been active competitors before the combination was made, as in the case of the original Sugar Trust and Whiskey Trust. In these cases the combination was sought for the special purpose of lessening competition, together with the elimination of the competitive wastes. The combination simply took different competitors out of the market and enabled the price of the product to be fixed by the central organization.

In the second kind of combination, the so-called "vertical combination," or "integrating combination," or corporation, the constituent members have often not been competitors in the same line of work before the combination was made, though they each seek a share of the value of the final product. Instead of being competitors in the same line of business, they have been producers of different products at different stages in the same industry. For example, the Federal Steel Company was a combination of several companies that were not competitors. The Minnesota Iron Company owns iron ore property, also the Duluth and Iron Range Railroad Company, which connects its mines with Lake Superior at two points. It owns ore docks and also twenty-two steel lake vessels that can carry a large proportion of its products each year. The Federal Steel Company bought all its stock. It also bought all of the stock of the Lorain Steel Company, which manufactures chiefly steel rails for street railways, although some steel billets. It bought all the stock of the Johnson Company, which is engaged chiefly in manufacturing frog switches and crossings for street railroads, as well as electric motors. Another company, all the stock of which it purchased, is the Illinois Steel Company with several plants, which produce pig iron, steel rails, steel billets, steel plates, etc. This company is also the owner of the stock of the Chicago, Lake Shore and Eastern Railway, which connects its plants in the neighborhood of Chicago, and also gives these plants an outlet to the general market over all of the railroads in the country. It also owns large tracts of coal property on which it manufactures coke used in its plants.

From this statement it will be seen that the Federal Steel Company by its formation lessened only to a very slight extent, if at all, the competition in the same lines which had existed before. Its purpose was different. Through the combination the mines are furnished with a sure customer, provided they need one, for a large part at least of their output; while, on the other hand, the Illinois Steel Company, in its manufacture of steel rails, billets, etc., is assured of a steady supply of ore for the carrying on of its manufacture. In this way contracts can be taken for a long period of time in advance with perfect certainty of their being carried out on time without any excessive losses that might otherwise come from possible changes in the price of ore. Before the organization, of course, each of these separate companies tried to get the largest share possible of the value of the finished product. Now, while the contest may be the same, the motive has been weakened. The profit which the mine foregoes, may be made by the rolling mill or the fleet of transports. It is, of course, true that the business of each one of these separate companies is managed independently; it is still further true that at times the mining company can sell its ore to better advantage to outside manufacturers than to the other constituent members of the Federal Steel Company, they in turn buying their ore to better advantage from some other mine. But, while the work can be ordinarily and is ordinarily carried on independently, and while at times each of the separate constituent companies deals largely with outsiders, this perfect union in management enables them to be secure at all times as regards the supply of raw material on the one

hand, and a proper sale of the raw product on the other, advantages that can by no means be lost sight of.

Some other companies without any formal organization were managed in largely the same way. For example, the American Tin Plate Company, the National Steel Company, and the American Steel Hoop Company in their earlier days while entirely independent in their organization, had nevertheless to a considerable extent the same men as large stockholders and as directors. Here, as in the case of the various Standard Oil Companies, while there was a difference in formal organization there was a real "community of interest." While each one could thus work independently, and while legally each one did so work, there was to a considerable extent the same knowledge and the same harmonious working that was found among the constituent companies of the Federal Steel Company, of the Distilling Company of America, and of others that united through the holding of the stock of the constituent companies by one parent company.

Of course, in 1917, the largest and most complete example of the "integrating company," is the United States Steel Corporation, of which the Federal Steel Company and the other steel companies mentioned together with many more have become subsidiary members. But the integrating idea still remains, each company having largely its separate field, whether it be the steel rails, or tin plate or wire or ships, and each is rather supplemental than competitive in nature. Of course the idea of a community of interests through common stockholders is widely extended and often in-

cludes institutions as widely separated as banks and ships and mines and factories.

Whatever the form of organization, however, the one essential requirement is efficiency and an opportunity for saving any of the waste that might come if the different corporations or companies were working independently. It is desirable, of course, from the one point of view that this efficiency be used to serve the public in the way of better goods and lower prices. On the other hand, from the standpoint of the combination itself, the efficiency points simply to the cheaper cost of production and the more efficient control of the processes of manufacture and sale, whereas the service to the public in the way of cheaper prices is of course a secondary consideration, and is sometimes even contrary to the wish of the corporation.

The form of organization will naturally determine to a considerable extent the method of management of one of these combinations. Ordinarily there is no difference in appearance between the management of a large corporation called a Trust and any ordinary corporation. Any student of corporation law, upon reading the charter and by-laws, can readily tell from the power that is put into the hands of the directors whether they are in a position to manage the corporation in their own interests as against those of the stockholders, or whether the stockholders are given not only final but active power of control.

If one may judge from the fluctuations of the shares of several of these larger corporations on the Stock Exchange, it would seem that the power at any rate is given to the directors so to manipulate the stock that

they as individuals, by buying and selling at suitable times, may make large individual profits at the expense of the majority of the stockholders—a most dangerous power.

In many cases the stockholders are prevented by the by-laws from having access to the books of the corporations, except under the most extreme circumstances. The directors make no reports to the stockholders that give them any clear insight into the methods of management of the business, and the public who may be intending to invest in the stock have no means of judging what the financial condition of the corporation is. When the charter and by-laws thus enable a board of directors to conceal absolutely from the stockholders the condition of the business, one may at least be justified in the opinion that if the affairs of the corporation are not managed for speculative purposes by the directors, it is because they are men above temptation of that kind.

In some instances, also, the Boards of Directors are so classified and the terms of their office so arranged that those who are first put into control as directors by the organizers of the company may keep that control for a period of years without any possibility of being ousted by the shareholders, unless their methods of management are so palpably fraudulent that the courts will order their removal. Under those circumstances the directors and officers are in a position of strong temptation to manage business in their own interests with comparatively little danger of being found out for a considerable length of time. Here, again, an investor who sees in the articles of incorporation and by-laws

provisions which deprive him and his fellow shareholders of all effective power over the directors for a period of years, buys the stock knowing his own risk.

It is not intended, of course, to overlook the fact that too great power given to the shareholders, or too close a knowledge of the interior management of a corporation by the shareholders, may easily result in injury to the interests of the great majority of them. It is not desirable for a corporation to have its competitors know the details of its management. If any shareholder were at liberty to examine the books of the corporation at any time, or if the directors were compelled to give to the shareholders the privilege of examining closely the details of their management, it would be a comparatively easy matter for the manager of a rival company to buy a few shares of stock in order that the lawful and proper secrets of the corporation might become his. It would also be possible for an individual shareholder practically to levy blackmail upon the corporation, which it will promptly, however unwillingly pay, in order to prevent proper secrets of management from becoming public property. While one may readily grant that these dangers to the real welfare of a corporation exist if too great power is given to the shareholder, one must not overlook the fact that the other extreme is no less dangerous.

It would be very desirable if more careful study were made of the forms of organization, as shown in the charter and by-laws of corporations. Intending investors would in many cases by such study be prevented from putting their money into corporations organized evidently for the purposes of speculation, or for the special

advantage of the directors and officers against the interests of the shareholders.

So, too, if more attention were paid to this feature of corporation organization and management, there would soon be some decided improvement in our corporation laws. Although many improvements have been made in several of our states within the last decade much that is desirable still remains to be done.

Of course these statements regarding Trusts apply to all large corporations, but the opportunities for speculation against the interests of the shareholders and of the public are so much greater in the case of the very large corporations, which have some monopolistic power, that the offense becomes almost a different kind.

Consideration of the dangers to the industrial community from the great corporations when improperly organized or controlled ought not, of course, to lead us to overlook the fact that modern industrial development has been largely dependent upon the corporate form of industrial organization with limited liability of stockholders. Moreover, there seems no reason to doubt that the great combination is another normal step in industrial progress akin to the invention of the steam engine or the electric telegraph. As in the early days accidents from the new machines were more common than now while the efficiency was vastly less, so we may all anticipate in the near future a rapid lessening of the evils connected with the great corporations and a decided increase in their efficiency. Indeed this stage of development has already been reached. Evils are lessening, benefits increasing.

CHAPTER IX

PRICES

IF IN any industrial combination the economies which are made by saving the wastes of competition can be secured, it is evident that, it is possible, without the profits being lessened, to put prices of the finished product below former competitive rates; or, on the other hand, to put prices for raw material above those common before. Or again, if, as a result of the combination, there comes an increased output from the demands of the export trade or from an added demand that might come from lowered cost, the price paid for raw material might through either of these influences be raised somewhat. What may be done if a certain degree of monopoly can be held, has already been discussed at considerable length in the chapter on Monopoly. What may be done is, however, but one consideration. It is, perhaps, of more importance to show what has been done, in order that we may be better able to judge the present industrial situation, to note the ways in which the leaders of the industrial combinations have really used their power, to see whether experience has in any respect changed their earlier policies, and to consider what changes in legislation or what new measures of legislation, if any, may be needed in order to adapt these combinations to our present industrial conditions. It will, perhaps, be best to

give as careful a statistical representation as possible of the prices over a series of years in several lines of industry where the statistics can be gathered, and thus to test the effects of the industrial combinations upon prices. While the effects can thus be shown here upon only a few articles, it is believed that they are sufficiently typical, so that they represent fairly well the actual effects of combination up to date. Similar studies of many other articles show, in the main, the same general results. From a theoretical discussion we can judge, perhaps, somewhat more accurately what the effect is likely to be in the future.

The actual effects of the industrial combinations upon prices form certainly one of the best tests of their usefulness or disadvantage to society. The popular impression seems to have been earlier that these combinations very greatly increase prices to the consumers. On the other hand, the Trust managers and their advocates are in the habit of claiming that, owing to economies of management, the Trusts lower prices to consumers, while at the same time they increase the wages of their employees.

It is, of course, comparatively easy by the selection of statistics at certain chosen periods to show either of these results. It has, in consequence, seemed wisest to secure as far as possible average monthly or yearly prices of the leading raw materials and finished products of several of the larger combinations for a series of years, and to plat these on charts in such a way that the relations at all times between the two can be most readily seen. In some cases it has been practicable to compare European prices with American, in order that

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influence of an individual combination over a period of years, money prices have been used. Inasmuch, however, as the value of gold in terms of commodities has changed not a little in later years, it has seemed best in certain cases to make a comparison also between the price of the article under consideration and the price of commodities in general as shown by an index number. This method of illustration, while not perfectly exact as will be explained later, still has some advantages over the mere comparison of money prices. In Charts II, III, IV, VII will be seen, therefore, the power that the article under discussion has to purchase other commodities used for consumption.

SUGAR*

The lines on Chart I represent standard refined and raw sugars in the United States, Germany, and England. For America the refined sugar considered (black line A) is the granulated; the raw sugar (black line B), the 96 degree centrifugal. The German sugars are: for the refined, the granulated f. o. b. at Hamburg (green line H); the raw sugar, the German beet root 88 per cent. f. o. b. Hamburg (green line K).

The English raw sugar represented (red line E) is the English Java afloat, a 96 per cent. test, United Kingdom terms. This English raw sugar corresponds closely with the American 96 degree centrifugal. The English refined sugar (red line D) is Tate's cubes, a special grade which normally brings somewhat more than the regular price of the American granulated sugar, probably at times nearly one-half cent more.

*From Willett and Gray's Weekly Statistical *Trade Journal*, various dates.

The German sugars, both raw and refined, are of somewhat poorer quality than the American sugars. In a few establishments in Germany the refined beet sugars are made directly by a single process from the beet roots themselves. The refined beet sugar, even in the United States, is not considered quite up to the grade of the cane sugars produced in the refineries in the East. It sells even in the Chicago markets somewhat lower than the refined sugars from the cane which are produced in the eastern refineries.

The line C on the chart represents in its distance from the bottom of the chart the perpendicular distance between A and B. It measures, therefore, the cost of refining the sugar plus the profit to the refiner. The cost of refining sugar varies materially from month to month or from year to year, as improved processes tend to lower somewhat the cost of refining, or as increased cost of new sugar gives added cost to the waste and thus increases the cost. Again, any increase in wages, or any increase in the cost of boneblack, one of the chief costs in refining, or any increase in the rate of interest upon capital invested, or any increase in the cost of the raw material used in building refineries, necessitating the investment of a larger amount of capital, would tend to increase slightly the cost of refining. In the main, however, the fluctuations in this line C would show fluctuations in the profit, especially where these fluctuations are simply from month to month or from year to year.

The line L represents in similar manner the perpendicular distance between lines H and K, and is thus the margin showing the cost of refining plus the profit

of the German refiners. It will be noted that this line is regularly considerably lower than the line C. There are probably two reasons for this. The first is that the German beet sugars in some factories are made by a single process, the same as the raw sugars, so that the cost of refining is considerably less, and as has already been indicated, the quality of the refined sugar is also not quite so good. Moreover, the cost of their material is somewhat less, and German wages are distinctly lower. We should expect this margin, therefore, to be somewhat lower than that in America. In addition to that, as the rate of interest in Germany rules somewhat lower than in the United States, the Germans are probably content with a somewhat less rate of profit. Furthermore, during a considerable time preceding the International Sugar Union Convention there was a bounty on sugar exported from Germany. This bounty it would seem would tend to lessen somewhat the price of the refined sugar, as compared with the raw. That, however, does not appear in this margin.

Let us note now particularly the fluctuations in line C, representing in rough outline the history of the profits of American refineries. The actual cost of refining, of course, varies somewhat, but, according to the testimony given by the refiners at the time of the Industrial Commission investigation in 1899, the probability is that the actual cost was not far from 50 cents a hundred, although the former president of the American Sugar Refining Company, Henry O. Havemeyer, declared that, while that might be considered the bare cost of refining, at least 24 cents more ought to be added, on account of the waste in raising sugar from

96 degrees to 100 degrees, the polariscope test of the refined. He thus thought that the margin necessary for profit should be put at some 75 cents a hundred, instead of from 50 to 60 cents. He apparently reckoned in some interest on the investment with the cost, whereas some of the other witnesses apparently did not do this. Mr. Jarvie, for example, of Arbuckle Brothers, testified that, with a margin of from 50 to 60 cents at that time, sugar could be refined without loss; while Claus Doscher was willing to state that refining could be done without loss on a margin of 50 cents. Mr. Post, at that time a commission merchant in sugar and molasses, selling agent of the Mollenhauer and National sugar refining companies (independent), was inclined to put the necessary margin somewhat higher than Mr. Doscher, about 60 cents, but he, although in a rival company, conceded that a great establishment like the American Refining Company's establishments ought to have an advantage of from 3 to 5 cents a hundred in refining. Since this testimony was given more than fifteen years ago, costs of refining have doubtless increased, especially since the outbreak of the European war, for the reasons previously indicated.

Another point which should be kept in mind when judging this margin, although the influence is often scarcely noticeable on the chart, is that, in order to secure the same profit, the margin between the raw and the refined sugars must be slightly greater when the price of raw sugar is high, inasmuch as the loss of weight is a more expensive waste. If, for example, with raw sugar at say $3 a hundred, there were a 7 per cent. waste in refining, this loss would amount to 21 cents a hundred

while if at the same 7 per cent. waste the price of raw sugar were $4 a hundred, the waste would amount to 28 cents. It is clear, therefore, that in order to make the same profit the margin should be 7 cents a hundred more with raw sugar at $4 a hundred than at $3 a hundred.

Frequently, too, it happens that there is unusually vigorous competition and a consequent low margin each year from December to March, while the Louisiana crop is being refined and marketed and when consumption is smaller than at any other period of the year. This, however, does not appear with any regularity. Likewise, the influence of vigorous competition upon the price of raw sugar should be noted at times. Whenever the crop is somewhat short, this not merely has the tendency to increase the price on account of the normal scarcity, but it is just at those times that competition is most vigorous.

Beginning with the year 1885, we see that during the years 1885, 1886, and 1887—and substantially the same conditions had existed before—there was a low margin, averaging not very much above .5 or .6 of a cent a pound part of the time, as near the end of 1885—a fall distinctly below the margin that had existed for several years before. This decidedly low margin was due, of course, to vigorous competition among the independent refiners, with at the same time, a sharp rise in raw sugar. From the testimony given by witnesses before the Industrial Commission, this competition was so destructive in its nature that a large percentage of the American refineries, 18 out of about 40, went into bankruptcy.

In the latter part of 1887 the Sugar Trust was formed. The margin was immediately raised more than ½ cent a pound, at times fully one cent. During the year 1888 and most of 1889 it will be noted that the margin was at no time less than one cent a pound, at times it was more than 1½ cents, and it probably averaged not far from 1¼ cents. When one takes into account the lessened cost of refining and of distribution that come from the organization of the combination, it is fair to judge that the Trust made enormous profits. In the latter part of 1889 a large competing refinery built by Claus Spreckels at Philadelphia, entered the field, and vigorous competition began. The margin fell immediately to about the point where it had stood before the organization of the Trust, from .6 to ¾ of a cent a pound. This vigorous competition continued for rather more than two years, until in February, 1892, the Trust bought up the competing refineries, when the margin at once went back to more than 1 cent a pound, substantially at the same point that it had been held during the noncompetitive period, 1888 and 1889. From 1892 to 1899 the margin remained on the whole high, with a gradual lessening toward the latter part of this period. Presumably this lessening was due in part to improvements in methods of refining and distribution and, in part, probably, also to a growing realization of the danger of inducing new capital to enter the business, tempted by the great profits that the combination was making.

It will be noted that during this period there were various changes in the duty on sugar, but that these changes seem to have had apparently only a slight

temporary effect upon the margin, although the lessening of the duty on raw sugar by the McKinley tariff affected very decidedly the price of both raw and refined sugar to consumers. Early in 1891 a fall of about 2 cents a pound is noticed in the price of both raw and refined sugars, due, of course, to this removal of the duties. It happens that just at that time there is something of an increase in the margin. In fact, it will be quite generally observed that whenever there is an increase in the price of raw sugar, followed by a decline there is likely on the whole to be something of an increase in the margin. The refiners push up the price of their refined sugar as soon as there is an increase in the price of the raw sugar; but when the fall in raw sugar comes, they are likely to delay slightly the time of lowering the price of refined sugar, thus getting an increased profit for the time being. Such increases in profit, owing to the more rapid fall in the raw sugar than in the refined, may be noticed in a number of instances, for example, in 1893, 1896, 1901, and 1905.

In 1898, after a period of some six years during which the sugar combination had had little effective competition, Arbuckle Brothers, Claus Doscher, and some others entered the field in a vigorous competition against the American Sugar Refining Company. Prices were immediately cut, as will be noticed on the chart, so that the margin between raw and refined sugar was even less than ½ cent a pound, probably all refineries running at a loss for a brief period.

Eventually in 1900 the bitter struggle ceased, and without any formal combination, the American Sugar Refining Company apparently gave up the attempt

to drive its rivals out of the market. From that time to the present there has been competition, new rivals having come into the field from time to time, although even to-day the great company takes the lead in the market. Its percentage of the total output, however, gradually diminished until in 1907 it fell below 50 per cent. Its percentage of the output for the last few years has been diminishing until in 1916 it was only 33.64 per cent. From the middle of the year 1900 on to the outbreak of the European war the margin has clearly been kept high enough so as to yield reasonable profits at least, and during most of the time very good, not to say large, profits.

It will be noted that during the last few years, when general prices have been increasing very rapidly, the price of sugar on the whole has not increased materially, although there have been two or three periods when for a brief time the price has gone up. When this has been the case, the reason has been clearly due to some temporary influence in no way immediately connected with the corporations. For example, in 1900 there was a decided increase in the price of raw sugar, as well as in that of refined. The influence was perhaps slightly due to the fact that in May, 1900, the German syndicate was completed, with the understanding that this syndicate was to last until 1904. That may possibly have influenced somewhat the price of the German beet sugar, one of the raw sugars used in the United States. Doubtless a much greater influence, however, was that the American supplies during that season ran short. In July, just about the time when the increase came, it was necessary for the Americans to do an un-

usual amount of buying. About 100,000 tons more than was usually bought in Europe in one season was bought at that time, and this additional rather sudden demand doubtless accounts for most of that increase in price.

Again, in the latter part of 1904 and the early part of 1905 there is a large increase in the price. It will be noted that at the beginning of this increase the margin fell, showing that it was not possible to put up the price of refined sugar quite so rapidly as the price of the raw increased; although when the fall in the price of raw sugar came, in 1905, it was possible to check the fall in refined, so that the margin increased for a brief time to about 1¼ cents a pound.

The cause of that increase was a short beet crop in Europe. There was a falling off of more than 1,000,000 tons in our imports, as compared with the regular import, and this short beet crop in itself is sufficient to account for the increase in price. Again, in 1908 the increased price came from a drought in Cuba, which resulted in a short crop in the Cuban cane sugar. It will be noted that during the years 1907, 1908, 1909, and 1910, the margin was on the whole less than before, so that there can be none of the increased cost of living during the last few years ascribed to the influence of the sugar combination.

Likewise, the decided sudden increase in prices in 1911 was due to a drought in Germany which lessened the beet sugar crop by some 2,000,000 tons. This decided increase in price seemed to have very little if any effect upon the margin. There had been a slight increase in the margin shortly before the large increase

in prices. This continued through the period of high prices. It was fully justified by the increased price of the raw sugar, which on account of the waste in refining justified a larger margin.

A study of the chart, especially when we compare the American with the German margin, seems to show clearly that the sugar combination at the height of its power had the power of determining for itself within considerable limits what the price of sugar should be, low or high, with or without competitors; although during two or three periods when there was the most vigorous competition it chose to cut prices in order to enable it to buy out its rivals rather than run the risk of letting them gradually take its market on account of its high prices. At the time of the Spreckles competition this policy was directly successful, and the combination succeeded in buying up its competitors and then again raising its margin so that it could make enormous profits.

On the other hand, the same policy followed in 1898, at the time of the Arbuckle-Doscher competition, did not have directly the same result. It seems evident enough that, even though its rivals may not have sold out to the combination, there was more or less of an understanding that the competition should be checked. The price was regularly announced every day by the American Sugar Refining Company, and the prices as announced by that company were understood to be the regular market prices followed by all of the refiners. From the time of the organization of the Trust, in 1887, for twelve or thirteen years the Trust kept the margin high for more than three-quarters of the time. Since

that period the margin, it will be noted, has steadily remained considerably higher than during the period of most vigorous competition in the few years preceding the organization of the Trust, and during the two periods of vigorous competition since that time.

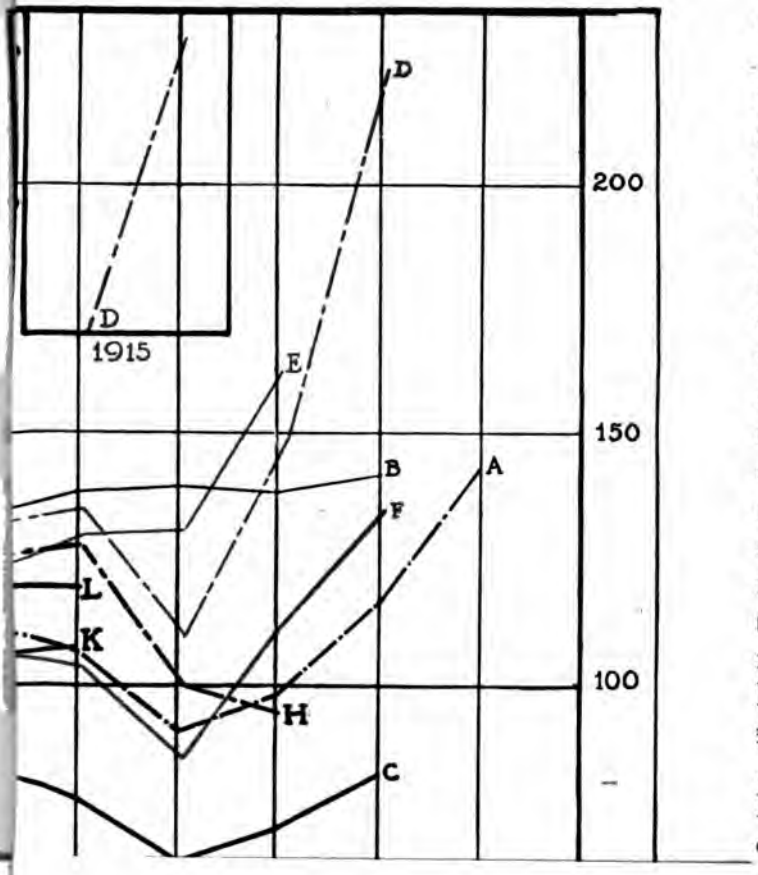
It will be noted that line F, representing the margin between the prices of refined and raw sugar in Great Britain in the earlier part of the year 1901, suddenly increases from somewhat less than a cent a pound to almost or quite two cents a pound, that it continues at about this price until 1908 when it drops to a little more than a cent and one-half, continuing at that price until the sudden changes caused by the European war. Before this sudden rise, the margin had been in Great Britain much the same as in the United States with the various modifications in the United States already discussed.

This change in the English margin in 1901 was caused by an excise tax with an equal import duty of from 1s 10d per hundredweight on low grade raw sugar to 4s 2d on refined sugar. The refiners being compelled to pay this tax naturally added it to the price. The lowering of the margin in 1909 was caused by the reduction of the excise tax to 1s 4d for the maximum. This furnishes another excellent illustration of the way in which various economic influences are brought out on the charts.

The outbreak of the European war, of course, completely demoralized the market and since its beginning prices, both here and abroad, have been determined by war conditions in such a way that they afford no criterion for judgment regarding conditions in times of

peace. In Germany since the outbreak of the war, the sugar has been controlled by the Government entirely as regards both output and consumption. The shipments either way being completely cut off, there has been no information given out, so that nothing trustworthy is known here regarding the German market since August, 1914.

France and Italy have placed the management of both the purchase and distribution of their sugar, raw and refined, in the hands of the English Royal Commission. Through its monopoly of purchases of the three countries named and its control of ships, England has influenced profoundly conditions in this country as well as elsewhere. Under ordinary conditions, the United States imports the raw material for three-fourths of the sugar that it refines. One-half of its supply comes from foreign sources. At the present time (February, 1917), speaking roundly, two-thirds of the sugar supply districts of Europe are in the war territory, a territory which before the war had supplied practically one-half of the world's supply. When, therefore, we consider that the war has cut off from the world market one-third of the world's production, we see the reason why Great Britain acting for herself and her allies has been compelled to import from Cuba large quantities, more than 730,000 tons in 1916. This has, of course, greatly restricted the United States buying market for raw sugar. Before the war the United Kingdom imported large quantities from Germany. During 1916 the United States exported to Europe more than 700,000 tons of refined sugar, part of the output from the raw sugar imported by us from Cuba, amounting to more than two million tons.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This prompt response to a sudden demand shows how great is the refining capacity of the United States. It seems probable that it could supply on short notice 1,000,000 tons more than its average output, if the demand were made.

In spite of these various war influences, all of which tend toward a greatly increased price of sugar, the price of refined sugar in the United States has remained lower than that established by the government commissions in the war zone or by refiners in other foreign countries under private competition. This fact seems to indicate that the system in the United States of the great combination and its other powerful competitors working in large units has secured better results for consumers as well as for producers than would have been possible under a system of competition working in small units.

Perhaps the most accurate way to estimate the influence of any industrial combination upon prices, especially if the combination to a considerable extent leads the market, is to examine the purchasing power of a unit of that commodity in terms of general commodities. The index numbers compiled by the United States Bureau of Labor and similar numbers compiled in other countries give one as accurately as may be a general average price for commodities. In Chart II is represented the course of prices of refined sugar from 1900 to 1914, referred to a base of an average price for the years 1895 to 1900 inclusive. This relative price is represented by the line A on the chart. Line B represents the course of prices of general commodities as indicated by the American index number. By dividing the index number by the relative price of

sugar we obtain in general terms the amount of commodities that can be bought by a unit of sugar. Line C then represents this purchasing power. In a similar way is indicated in the lines D, E, and F the price of sugar, index number and purchasing power of sugar in Great Britain; while lines H, K, and L represent similarly sugar in Germany. Line C shows that the purchasing power of sugar in the United States has declined in the years 1900 to 1914 inclusive, about thirty-two points. The line F shows that the purchasing power of sugar in Great Britain has declined only twenty-three points. If we exclude definitely the influence of the war by making the comparison only through the year 1913, we find that the purchasing power decreased twenty-eight points.

It is not possible to get the index number for Germany beyond the year 1912, but from the beginning of 1900 through the year 1912 the purchasing power of sugar in Germany decreased some fifteen points.

The total result seems to indicate that if the sugar combination in the United States has had any direct influence upon the price of sugar, it has been rather to reduce that price than to increase it, inasmuch as this comparison of the price of sugar with the prices of other commodities in the same country indicates that in every year since 1900 a pound of sugar in the United States purchased less of other commodities than it would purchase in 1900. In both Germany and Great Britain, the purchasing power of sugar has decreased since 1900, to a much smaller extent.

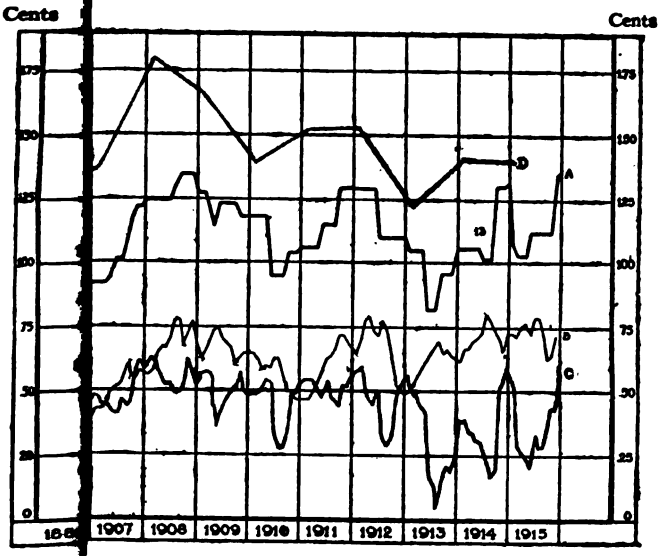
The charts seem to show that the sugar combination has had little if any effect toward steadying prices.

The fluctuations in the price of sugar and in the margin seem to be as frequent and as great on the whole since the formation of the combination as before. These fluctuations are clearly greater than those in the German market, and it may be said that they are also somewhat greater than those in the English market.

At the times when the sugar combination has been investigated by the Industrial Commission and other governmental agents, the assertion has been frequently made by its defenders that the price of sugar would have been higher if it had not been for the formation of the Trust. This assertion seems to have a partial justification in the figures printed and in the chart. The chart does make it perfectly clear that during the periods of the most vigorous competition the sugar refineries did their work on a very low margin. Moreover, when we consider that during the years immediately preceding the organization of the Trust, eighteen out of some forty refineries failed, the implication seems clear that the margin was ruinously low, and that, although the weakest competitors were forced out of business, the presumption is that so much good capital was wasted that there was a decided injury to the country. When an industry is of the nature of sugar refining, one requiring the investment of large capital in order that production may be carried on economically—a capital of perhaps $2,000,000 or $3,000,000 for a single refinery of the best type—we can see that it is possible for competitors of substantially equal strength to carry on their fight until all of them are running at a loss for a considerable period before finally several of them fail. If business is carried on under such circumstances, it is certain that whenever

there comes a failure of several of the competitors, or whenever instead of failure there comes a combination of rivals, prices will be put back to a figure decidedly above the competitive rates, in order that the great losses may be recouped. Unrestricted competition among powerful rivals in an industry of this character would thus lead, it would seem, to very great fluctuations in prices as the years go by, from those abnormally not to say ruinously low, to those abnormally high. If, on the other hand, there should be more or less of an understanding among the refiners, it is probable that prices would be somewhat steadier, and the margin a medium one, between the lowest and the highest.

There can be no doubt that the sugar combination has at various times been able to influence prices with, relatively speaking, little reference to the cost of refining; but it seems also clear that, although they have made excellent profits during the last few years, the margin certainly during the last three or four years can hardly be said to be abnormal. It should be remembered that, with this decreasing margin, there can be no doubt that the cost of refining during the last few years has quite materially increased. The cost of materials used in building refineries and the cost of boneblack have both increased. There has also been a tendency for wages to increase, and it is probable that the cost of refining is as much as 8 or 10 cents a hundred more than it was during the period of low prices in the late 90's or in the first three or four years of the present century. During the war period the cost has increased much more, justifying in good part, if not indeed entirely, the increased margin.



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WHISKEY*

A study of line C in Chart III, showing the difference between the price of the raw material, corn, per bushel, and the price less the revenue tax of the amount of the finished product, spirits, derived from one bushel of corn, shows nothing more clearly than the very great fluctuations in this marginal difference. The price of corn, owing to variations of the crops and to various factors which determine demand, fluctuates greatly from season to season. For a good many years during the time that the Distilling and Cattle Feeding Company, the successor of the earlier whiskey Trust, was in the hands of the receiver, General McNulta, the price of spirits was based directly upon that of corn, and fluctuated with it; but whether the price is directly based upon corn, or not, it is likely to be affected largely by that price. During the years 1881-1887 various pools were formed among distillers, most of which lasted but a short time, generally less than a year. The distillers entering into these pools as a rule agreed to limit their output to a certain per cent. of the normal output of their distilleries, sometimes to not more than 50 or 60 per cent. Usually also there were certain agreements regarding price. The chart shows clearly that during the existence of each pool the prices of alcohol were kept up, and the profits as shown by line C were correspondingly large. When, however, some untrustworthy distiller began to sell secretly at cut prices or to

*For earlier years, the prices of corn are those of the Chicago Board of Trade, the prices of spirits those reported by the Combination. Both series were taken mostly from the Peoria Board of Trade. For later years prices computed from Dun's Review.

increase his output beyond the per cent. agreed upon, and in consequence the pool suspended, profits fell to a minimum, doubtless at times below the cost of distilling.

Immediately after the formation of the Whiskey Trust, in 1887, prices were cut for a time, in order, as the organizers of the Trust did not hesitate to say, to force their competitors into the organization; but within a few months, the rivals having been largely bought up or destroyed, the profits, as shown in 1888, became very large. These profits stimulating competition, however, it became necessary at the beginning of 1889 to cut prices again very decidedly, in order to force rivals into the combination. It was during this period also that the decisions of the courts rendered the legal form of the Whiskey Trust doubtful, and early in 1890 it was reorganized as a single corporation. For some two or three years after this change the price and profits were kept on the whole fairly high; but in 1892 a period of speculation led to startling sudden changes in prices and corresponding changes in profits, so far as any sales were actually made. At times, of course, with these very high prices sales were very small. From the years 1890-95 certain rebates were paid to wholesalers. The chart attempts to show the prices with these rebates deducted, instead of giving during this period the quoted market prices; but one cannot be entirely sure of the accuracy of the chart in regard to this, since it has been impossible to secure with absolute certainty the dates of the various rebates. The chart is, however, doubtless substantially accurate.

In 1894, owing apparently in part to speculation, in

part, to competition or bad management, the conditions of the industry became bad; the prices of spirits were cut very low; the margin of profits entirely disappeared, and the Distilling and Cattle Feeding Company, the so-called Trust, went into the hands of a receiver. After the formation of the American Spirits Manufacturing Company, in 1895, the business seemed on the whole to have been considerably more stable than at any preceding period, even during the best years of the Distilling and Cattle Feeding Company.

From the time of the reorganization of the company, after it had been in the hands of the receiver, in the various forms which united the interests of the different establishments which were formerly rivals or which supplemented in a single organization the work of one another by controlling different parts of the business, there seems to have been a steady improvement in conditions. Although there was a fairly regular increase in the price of corn from 1897 to 1901, the price of spirits increased even more rapidly on the whole, so that the profits were, with here and there an exception, maintained. The general condition of the business is well indicated in a circular of April 30, 1903, issued by President Curley of the Distillers' Securities Corporation, the new organization that had taken the place of the Distilling Company of America. He said that the earnings for the fiscal year ending June 30, 1903, showed a substantial surplus; that the demand for their products was steadily increasing, the condition of the business fully justifying the expectation that the net profits would continue to show satisfactory annual increases. The assets of the company included not

only valuable real estate and excellent manufacturing plants, but in addition to these properties there were extremely valuable trade marks also represented by stock. Mr. Curley claimed that this great enterprise differed from many of the other consolidations of industrial enterprises, including the earlier whiskey combination, in not seeking a practical monopoly which would invariably lead to the establishment of new competitive plants. He claimed that these constituent companies had already gone through this phase of monopoly, and since 1899, the time of the organization of the Distilling Company of America, had conducted a business in open competition, free from artificial combinations to control prices, so that the progress which they had made was sound and substantial. He thought that through the large volume of their business and their financial resources they could purchase supplies more advantageously than could individual competitors, and they could likewise distribute their products at minimum cost. All of these advantages combined to increase their profits, thus enabling their companies to make larger returns, while maintaining a low market price for their output.

Soon after the middle of the year 1903, however, came a very decided cut in the price of their product, although there was no corresponding fall in the price of corn. In his annual report for the year ending June 30, 1904, the president called attention to the fact that from the outset of the fiscal year trade conditions in all manufacturing branches were unsettled, and a feeling of apprehension prevailed. The large demand for manufactured products had not been maintained.

He added that, while conditions in the whiskey industry had been in the main satisfactory, this company, the Distillers' Securities Corporation, had not escaped entirely from the general reaction; and they had therefore thought it advisable to pursue a conservative policy respecting output by curtailing to some extent the production of cheaper grades of goods on which the profit is very small, and devoting the bulk of operations to the higher grades. While the total sales were somewhat less than those of the preceding year, the percentage of gross earnings, he said, had been practically maintained. The cut in prices near the middle of the year was followed by a sharp recovery later in the year and in the early part of 1904; but later in 1904 occurred another sharp decline. Apparently there was a break between the Securities Corporation's subsidiary company (the Standard Distilling and Distributing Company) and the independent distillers, which occurred late in September. This resulted in another decided fall in the price of domestic spirits. The cut in price was openly announced and confirmed by an official circular, stating that the lower price would be maintained until further notice.

These cuts in prices and the presence of vigorous competition was announced in somewhat guarded terms in the report of President Curley, at the close of the fiscal year ending June 30, 1905. He claimed that, with the exception of the spirit branch of their business, the one here considered, all the other departments had shown an increase in net profits. The condition of the spirit market, however, accounted for a noteworthy difference in gross receipts for the year, compared with

those of the year preceding, and also for the decrease in net profits. He adds:

"The management some time since determined upon a course which would lead outside spirit distillers to realize that certain well-considered business methods should be pursued by all engaged in that branch. Accordingly, this company has so conducted its spirit department as to result in the adoption of a businesslike and conservative course by distillers. The fact that this company has other avenues of income from these various other branches—an advantage possessed by no other concern—has been a potent factor in this connection. Since May of this year the profits of the spirit department have again become normal, and if they continue as they are—and it is believed they will during the current year—the net profits will show a considerable advance over the figures for the year just closed."

This apparently meant that they had induced their competitors to maintain prices. In order to carry out this policy, and reduce expenses, one of the subsidiary companies, the Standard Distilling and Distributing Company, was dissolved.

The improvement in the conditions noted following May, 1905, appears clearly in the chart in the line illustrating the increase in the price of spirits, and no less notably in that illustrating the margin of profits. From this time on the general policy of the company seems to have been maintained. We note in the year 1906, again in 1908 and thereafter a steadiness of price covering a period of some months, which seems to indicate substantial control of market conditions. The reports of the company showed an increase in profits,

and a slight increase in dividends, and apparently a somewhat stable dividend-paying policy.

Between January, 1908, and October, 1912, the dividends were lowered to 2 per cent. per annum. After that none were paid until July 5, 1916, when a quarterly dividend of ½ per cent. was declared. Apparently the financial condition has been improved somewhat further from the fact that in May, 1916, there was enough accumulated cash so that $2,000,000 worth of bonds was paid out of a total of $14,093,236.06 issued in 1902.

The appearance of the chart since 1906 seems to indicate clearly an increasing influence on the market situation, certainly until 1914, about the time of the outbreak of the European war. The suddenness and extent of the changes in prices and the period during which the prices are held absolutely without change in spite of the variations in the price of corn, are quite similar to those that obtained during the days of the pools before the organization of the old Distillers' and Cattle Feeders' Trust in 1887.

The reports of the Distillers' Securities Corporation for 1915 and 1916 seem to confirm the more secure condition of the company thus indicated. In 1915 the secretary in his report called attention to the change in the conditions after the present management took charge in October, 1913. During the years from 1912-1913, inclusive, the cost of administration had decidedly decreased from more than $310,000 to slightly less than $100,000. The interest charges had decreased to a little more than $331,000, a decrease of more than one-half. The net profit had nearly doubled in the year 1913-1914 and

1914 with various fluctuations. On the whole, the experience of this combination seems to be much the same as that of the others, that as compared with general commodities the prices of their finished product show a decrease.

PETROLEUM*

In considering Chart IV, showing the prices of crude and refined petroleum and the margin of difference between these, indicating the cost of refining plus the profit, it should be noticed that the figures for crude oil are given in bulk per gallon, the package not being included in the price, whereas those for refined oil are given per gallon, including the cost per barrel, which is usually reckoned at 2½ cents per gallon. The cost of the barrel to the company would, of course, vary slightly, but 2½ cents per gallon is the amount regularly reckoned in the "Handbook of Petroleum," and is probably a fair general average. This is in accordance with the usual system of quoting these prices.

Taking the chart as a whole, and noting the prices of both crude and refined oils as well as the margin, it is seen that this margin shown by line C represents the perpendicular distance between line B showing the price of crude petroleum, and line A showing the price of refined petroleum. This margin dropped much more rapidly during the early years of the industry than in the last twenty-five years. This is of course to be expected. During the early years of the industry the methods of production naturally improved very rapidly, so that the

*From report of the United States Industrial Commission, Volume I, until 1899; thereafter prices furnished through the kindness of H. C. Folger, Jr., President of the Standard Oil Company of New York.

cost of production was lowered. The general process of refining may be considered to have been thoroughly established in, say, 1877, 1878, and 1879, so that since that time the improvements have not so much lessened the cost as established the quality and lessened the cost of distribution. Many other improvements have of course been made, but these have been mostly in securing a better use of the materials formerly wasted, which now have become by-products whose manufacture is often very profitable. It would doubtless be practicable, if there were vigorous competition, to consider the cost of refining as much less than at an earlier period, on account of the profit from these by-products, even though the actual cost of refining itself had not materially lessened. The chart and the figures, however, take no account of the by-products, that not being practicable, but show merely the prices of crude and refined oil.

There has been since about 1872 more or less of an association among the oil refiners who have made the Standard Oil Company. Mr. Rockefeller and some of his associates who afterward became the Standard Oil Company, had indeed started coöperative work as early as 1867 and had organized the Standard Oil Company in 1870; but it was not until 1872 that there had developed any powerful association, and, indeed, it was not until the latter part of the 70's or early in the 80's that the Standard Oil Company had really secured control of a large portion of its competitors. This early association did not affect the margin so much as did the improved methods of production, and the margin kept steadily decreasing until about 1879 or 1880. The

Standard Oil Trust was formed in 1882. From that time on for a period of eight or nine years there was only a slight decrease in the margin. For one or two years, about 1893 and 1894, the margin was considerably lower, the smallest margin having been in the year 1894, shortly after the dissolution, as a result of a court decision, of the Standard Oil Trust.

After the organization of the Pure Oil Company in 1895 there was a decided decrease in the price of refined oil, which continued until 1898, but there was little decrease in the margin. The Pure Oil Company claims that the decisive fall of the price of refined oil in New York in 1896 was due to its competition. In March of that year it put some wagons on the streets in New York, selling oil. The prices dropped very rapidly, until Mr. Lee, the active man in the Pure Oil Company, says that they were really below cost. Mr. Archbold of the Standard Oil Company hardly agreed with that, but did recognize the fact that there was active competition at that time. It will be noted that during the years after 1899 until 1900 the margin seems on the whole to have lessened gradually, reaching in 1907-1908 a point lower than at any other time excepting 1894, while the price of crude oil has most of the time ruled high.

It is quite probable, too, that there has been an added cost of refining, coming from the increased cost of supplies. Refineries are constructed largely of iron, and deterioration in them is rapid. Since 1899 there has been a decided increase in the price of iron for a considerable part of the time, the price at times being more than double what it was for some years preceding

that period, although for several years lower than in 1899-1900. Moreover, during the years 1899-1900 there was an increase amounting perhaps at times to as much as ½ cent a gallon in the cost of the packages in which the refined oil is carried, and the price of acids was also increased. Some of these prices have since then lowered. Again, as is well known, the cost of labor for several years in the past has been higher. We should not forget, also, that an increased price of crude oil would in itself justify some increase in the margin. As was explained in connection with sugar refining, any waste of raw material from refining is more expensive as the price of that material increases, and in addition to this the amount of circulating capital invested in the raw material increases with the price of that material, so that the added loss of interest must likewise be taken into consideration. Taking all these things into account, there can be little doubt that part of this decrease in the margin during the years 1905-1910 may properly be ascribed to an increased cost of refining, thus lessening somewhat the profits.

As an offset to this of course should be noted, what has been mentioned before, an increase in the value of the by-products, which would permit a lowering of the price of oil without loss, although it is doubtless for the interests of the company, and naturally, that the two should be divorced as far as possible.

The independent oil producers have said much about the arbitrary acts of the Standard Oil Company in fixing the prices of crude oil. The charge of arbitrary action by the Standard Oil Company was conceded by its witnesses before the Industrial Commission to be

true in special cases. That organization in special localities at times raised the prices of crude oil, until it ruined a rival pipe line for the transportation of the crude oil which was also a buyer of that oil. Then, on the absorption of this line the price was again lowered, to the great disadvantage of the oil well owners. Again, at times when the Standard was almost the sole buyer of crude oil, it kept prices so low that well owners were practically compelled to sell out to it before the price was raised. Most of these instances, however, had to do with special localities, and produced no great effect on the entire market, though they were doubtless enough to add decidedly to the profits of the Standard Oil Company.

The greater general changes in the price of crude oil, which affected also the prices of refined oil, have been brought about by other causes. The discovery of the very productive fourth sand oil wells in Butler County, Pennsylvania, only about 80 feet below the third sand levels, led to a great increase in production and to the consequent rapid fall in price noted on the chart in 1873 and 1874. It was claimed by Mr. Lee that the fall of the two preceding years was brought about by the general demoralization in the oil business caused by the relations of the railroads with the South Improvement Company, one of the predecessors of the Standard Oil Company and its successors. Moreover, the year 1873, it will be recalled, was a panic year. The checking of the flow of oil during the next three years raised the price in 1875 and 1876, as is noted on the chart, though the refined increased much more than the crude. Then the discovery of the famous Bradford oil fields in

1876 led to the great decline of 1877 and 1878. The depression noticed in 1890-1892 in the price of crude oil was caused by the discovery of the MacDonald field in Allegheny County, Pennsylvania, with some of the largest wells ever known in the country. The sudden rise in 1895 seems to have been due to the discovery of the fact that the amount of oil on hand and the production were declining very rapidly, as compared with the demand and to the desire to get stocks ahead. It is probable that some of the refineries had sold ahead beyond their capacity to supply from any stock which they had on hand. The advance in crude oil was largely thought to be arbitrary, and intended perhaps to squeeze these independent refineries. Whatever the exact cause, there is no doubt that there was an urgent demand on a short supply, and that the market was largely speculative for a time.

The rise in 1898 and 1899 is doubtless due to another check in the output. It is probable that the price would have continued high from that time on, had it not been for the still further new discoveries of the oil fields of Kansas, Texas, and California. In 1904, for the first time, more petroleum was produced in the United States west than east of the Mississippi River.

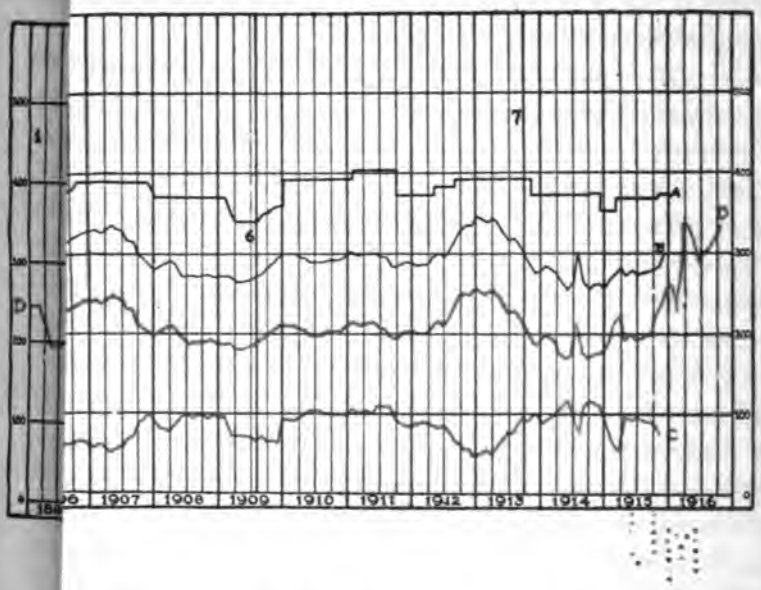
It is interesting to note the changes in the price of oil after the decision of the United States Supreme Court dissolving the Standard Oil Company, as explained in some detail in Appendix D. The decree of the court ordered that the transfers of the stock of the central company be made to the various independent companies into which it was to be divided. Such a process took some time naturally. The order was of September

1, 1911, when the books were closed. The distribution was made December 1, 1911.

From the year 1908 on until 1911, as will be noted by following the course of line B, there had been a decline in the price of crude oil, due mainly to the discoveries of the oil fields west of the Mississippi River. The price of refined oil was, however, not only maintained but increased so that the margin shows a decided rise in the latter part of 1909, which was maintained and somewhat increased in 1910, 1911, and 1912. During the year 1912 and the early part of 1913, the sudden rise in the price of crude oil, far more than enough to outweigh the slight increase in the price of refined, reduced the margin very materially from 4.33 to 2.80. This oil margin was maintained for more than a year until the excessive output of crude oil in 1914 caused a sudden drop in price, enabling the company to raise the margin to that obtained before the decline. It is probable that the lessened demand from Europe on account of the outbreak of the war also had a material effect on the fall in price of crude petroleum, which, although it enabled the company to increase the profit per gallon, probably lessened the total profit. As a result of the overload put on the transporting and refining branches of the petroleum industry by the excessive output of crude oil in 1914, the year 1915 may be characterized as a period of readjustment in which activity in production was purposely retarded. The Cushing Pool, in eastern Oklahoma, which had completely dominated the industry since June, 1914, attained its maximum production, estimated at 300,000 barrels a day, in April, 1915, and entered a stage of

rather abrupt decline, which, with the passing of millions of barrels of storage oil in that area into the control of a few strong companies, resulted in an increased demand for oil produced in other parts of the country. This demand was accompanied by advancing prices, which still remain high.

The heavy red line D shows the purchasing power of petroleum as contrasted with commodities in general as indicated by the index number. The line marked $1 on the scale is taken as the base from which this line representing the purchasing power is calculated. This line representing 100 gives the average purchasing power of petroleum for the five years 1895 to 1900. The course of the line from that date (1900) to 1914 shows a decided decrease in the purchasing power of the gallon or barrel of oil since that date. The line representing the purchasing power is drawn on a larger percentage scale than that representing the mere prices of oil, so that the fluctuations seem much more marked although the trend is accurate. The very decided decrease in purchasing power in the years 1900 and 1901 is caused primarily by a decrease in the price of oil, although in 1901 there was also a slight increase in prices of general commodities which would in itself, of course, lessen the purchasing power of oil. The sudden rise during 1902 is due to the increase in the price of oil in the latter part of that year. In the years following, from 1903 to 1910 inclusive, there was a decided decrease. This is caused primarily by the steadily increased price of general commodities which was offset through the year 1907 by the decided drop in commodity prices, following the panic, not offset by a corresponding drop in oil. The



al for one full weight box of tin plate

recovery in general prices in 1908 and 1909 is shown by the decrease in this purchasing power. Again, the large increase during the years 1911 and 1912 is caused by the increase in the price of petroleum not offset by so great an increase in the price of general commodities, although they were slightly increasing, while the decrease again in 1913 and 1914 is due in part to the decrease in the price of oil, in part to the increase in the price of commodities.

Taking the period as a whole, however, from 1900 to date it will be seen that this great combination, as practically all of the others, seems not to have raised the price of its chief product to an amount that corresponds to the rise in the price of general commodities.

TIN PLATE*

Chart V, representing the changes in price in the tin plate industry, shows certain important changes in the course of prices that are noteworthy. The tendency toward high prices and profits is not so noticeable as that toward steadiness of price and toward increased profits, especially at times when the raw material is falling.

The standard unit taken for the price of the finished material is one box of tin plate, 14 by 20, full weight 108 pounds. The raw material used for this is 105½ pounds of steel plus 2½ pounds of tin. Although it is not quite accurate, it has been thought best to take for the basic price of steel that of steel billets. The line A on the chart therefore represents the price of the box of tin plate. The line D represents the price of the

*From the report of the Industrial Commission, Volume I, until 1899, thereafter by United States Steel Products Company. Labor cost furnished by Mr. W. J. Filbert, Comptroller of the United States Steel Corporation.

raw material by weight contained in such a box, although the steel is the unrolled steel billets. The line B represents this same amount of steel and tin plus the amount of labor required to manufacture the tin from the black plates, or the bars, not, of course, including the earliest operations. The cost of labor represents the average of a number of tin plate mills, and is authoritative. Although there has been no lessening of the wages of labor, although in fact the wages have been increasing, the labor cost per box, which in 1893 was $1.60, had decreased in 1897 to $1; in 1901, a year or two after the organization of the American Tin Plate Company, to 93 cents; in 1906, to 82 cents. After that there was a slight increase; in 1909 it stood at 84 cents, in 1910 at 89 cents, then declined somewhat, standing at 81 cents in 1915. It will be noted that since 1893 this labor cost per box has decreased by nearly one-half. The line C on the chart represents the margin between this cost of raw material plus the labor and the price of the box of tin plate, indicating the course of profits.

It will be noted that from 1894 until the middle of 1897, in spite of a decided drop in 1894, with a rapid recovery and another decline in the latter part of 1896, this margin between the cost of material and labor and the selling price of tin plate remained at considerably above $1 a box, sometimes amounting to $1.50, and averaging perhaps $1.30. During 1897 there was a decided decline in the price of tin plate, with a corresponding or greater decline in the margin, which continued steadily down until October, 1898, when it reached a point distinctly below $1, as low as 74 cents.

Somewhat before the organization of the American

Tin Plate Company, in December, 1898, there had been a decided increase in the price of tin plate, and this increase had been more than proportionate to the increase in the price of raw material, although that had advanced somewhat as early as June. It was of course known to most of the tin plate manufacturers that the combination would probably be formed, and presumably on that account the different establishments had already stopped their most vigorous competition. This increase in the margin between cost and selling price was fixed first at $4.215 a box and then at $5, where it remained until the end of the year.

Although the figures from January, 1900, are on a different base, the chart represents accurately the conditions. In January, 1900, we note a decrease in price to $4.65 a box, a price maintained for eight months until September, 1900, when with one interval the price was cut to $4. This price was maintained without change until November, 1902, a period of more than two years, although a decided increase in the cost of raw material and labor had very decidedly lessened the profits. In November, 1902, there was another cut in the price. From 1902 until the present it will be noted that the prices of tin plates have in the main followed the prices of the raw material, although the changes have not been so rapid, the prices, when once fixed, remaining usually unchanged for a period of nearly a year, while the price of raw material shifts continually. It is noteworthy, however, that the margin of difference since the formation of the Tin Plate Company, and especially since its absorption by the United States Steel Corporation, in 1901, has been steadily decidedly lower

perhaps nothing in the charts to indicate that the combinations have had any material effect during the last few years.

Nails and Wire. On Chart VI we find illustrated the price of steel billets, line D, which, for our purposes, may be considered the raw material, together with the price of wire nails, line C, that of smooth wire, line B, and that of galvanized barb wire, line A. The line H represents the margin between steel billets and wire nails.

If we note this line H carefully, we shall see that during the earlier period presented, especially from the years 1890 to 1895, there was a steady decline in the margin as well as in the price of both steel billets and wire nails, the fall in the price of nails being more rapid than in that of steel billets, until, in 1894 and the early part of 1895, the cost of production plus the profit of the nails if figured on this basis amounted to not much more than 25 cents a hundred pounds.

During the latter part of 1895 there was a very sudden and rapid rise not merely in the price of wire nails but also in the margin, showing a very decided increase in profits. A second rise, although not so great, was made in the earlier part of 1896, the margin also increasing almost proportionately. It will be seen also that there was a slight increase in the price of steel billets, but no large increase—nothing that in any way corresponded to the very rapid increase in the price of wire nails, and this price soon lessened. This great increase in the price as well as in the profit was caused by the formation of the wire nail pool. It seems clear that the makers of this pool did not expect to be able

to hold their monopoly for any great length of time, and that in consequence they thought it best to push their advantage as hard as possible for the time being, feeling certain that in the not distant future competitors would come into the field, so that their prices would again need to fall. It takes time, of course, to build new competing plants; and in the case of industries such as those of steel, a well-organized pool can, if it wishes, practically control the market for a considerable length of time. Their prices increased rapidly from $1.45 a hundred to $1.68, to $2.25, to $2.55, where it held for six months, before the break came. At the end of that time, after some eighteen months of practical monopoly, competitors had succeeded in providing facilities for manufacture, so that the pool was broken and prices fell back to a competitive rate, though not so low as they had been before the organization of the pool. It seems probable that the boldness of the pool managers in pushing prices so high even extended the time of the monopoly. Competitors enough to break the pool would have arisen sooner, had not each one anticipated its speedy collapse on account of its high prices promising enormous profits. Each believed that some one else must very soon enter the field.

Even after the break in the wire nail pool, the margin during the years 1897 and 1898 remained considerably higher than it had been for three years before the formation of the pool, with, however, a slight decline. It seems probable that the margin during the years before the formation of the pool had been so low that the business was really unprofitable.

In January, 1899, the American Steel and Wire

Company, which controlled from 65 per cent. to at times even as high as 95 per cent. of the output of wire nails, was formed. Moreover, at the beginning of 1899 there came a very strong and rapidly increasing demand for steel products of all kinds. The price of steel billets and pig iron as the raw material and the price of all kinds of steel manufactures rose very rapidly in consequence. Even then it was not possible for manufacturers to meet fully the demand. It will be noted that the margin of profit on steel nails increased also readily, although not quite so rapidly as did the price of steel billets. Besides the increase in profit which doubtless was made by the American Steel and Wire Company, there was also an increase in the cost of production of nails that explains part of this increase in the margin. First, there had been a decided increase in the wages of laborers engaged in the manufacture of wire and wire nails. From testimony given before the Industrial Commission, this increase in wages among workers in this class was greater than that among the laborers engaged in the manufacture of steel billets, so that this would normally bring about more increase in the margin.

Another reason for the increase in the margin is the additional cost of waste. There is always, of course, a considerable waste in turning the raw material, steel billets, into wire and wire nails. If, for example, the loss were 5 per cent. in the case of steel valued at $15 a ton, it would amount to 75 cents; whereas, if steel were $30 a ton, the loss would be $1.50. During this period of increased prices steel more than doubled in price. In consequence, with the same profits, the margin should

have increased quite noticeably. On the whole, however, both from the chart and from outside testimony, there can be no doubt that the wire company decidedly increased its profits during this period of the rise in price.

In October, 1899, occurred a fall in the price of steel billets; but, while the price of nails was put down a little, shortly afterward another increase followed, so that during the early part of 1900 the profits again increased.

It is fair to say that, even without any combination on the part of the manufacturers, there would in all probability have been a decided increase not merely in the price of the finished product, but also in the margin between the crude and the finished product, on account of the enormous demand. The testimony seemed to be uniform that none of the manufacturers in any of these finished products of steel were able to meet the demand. It seems likely, however, that the combination was able to take rather better advantage of the opportunity than the individual manufacturers could have done.

While the chart represents the general market conditions as they were furnished to the *Iron Age*, it is probable that they do not represent with entire accuracy the actual conditions in the steel trade. Each manufacturer made his sales independently, and these sales were frequently made by contracts extending over a period of some months. In the case of some contracts, such as those for rails or beams, the period was sometimes as long as from one to two years. In consequence of that business custom, the majority of the manufacturers of steel might well have been fur-

nishing their output on a contract price fixed six months before, while a few manufacturers making late sales might have been obtaining a price 50 per cent. higher. On the other hand, during the first half of the year 1899 probably the market prices were considerably higher than those actually realized by the manufacturers. When the sharp fall in prices came, early in 1900, of course the situation was reversed, and some manufacturers were delivering output at a price decidedly above that quoted in the market. Taking all of these circumstances into account, it seems nevertheless true that the chart throughout represents fairly well the changing conditions of business during the period covered.

The very high prices of 1899 led to the usual result. The very great demand followed by the high prices gradually slackened, while the production continued until there were large stocks in many instances on the market. The awakening to the new situation came very suddenly. In April the chairman of the American Steel and Wire Co. suddenly ordered a shutdown of a number of mills of that company, and, in addition to that, gave expression to a number of pessimistic opinions regarding the state of the steel trade, saying that he thought the trade was in a very dangerous condition. Naturally, sharp declines in prices followed not merely in nails, but in smooth wire, barb wire, and in all other lines of products. The declines were followed promptly by others, and yet there was a decided stagnation in the market. The decline in steel billets, that had begun in the latter part of 1899, continued through most of the year 1900. The large profits shown in wire nails declined promptly; but, as the price of steel billets continued to go down after

the fall in the price of nails was checked, the margin rose again and continued high until the increasing price of steel billets in 1901 and 1902 brought the margin back again to about the position where it had been after the breaking of the nail pool in 1896, and before the formation of the steel and wire company in 1899. With more or less fluctuations, the margin has remained through the changing prices of steel billets and nails much the same from 1902 and 1903 until the outbreak of the European war, with a tendency toward a slow decline. After that came a large increase in the margin.

The Carnegie Company was organized in 1900, and its new organization was followed in the early part of 1901 by the organization of the United States Steel Corporation, an organization which took over not only the Carnegie Company and the American Steel and Wire Company, but also a number of other leading manufacturers of finished steel of various kinds. The policy of the United States Steel Corporation appears in the prices not merely of steel nails, but perhaps even in a more striking way, as is shown on the chart, in the prices of barb wire and smooth wire. It will be noted that the prices of both barb wire (line A) and smooth wire (line B), the second line beginning only in 1895, have since 1895 followed very steadily the prices of steel billets. Before that date the price of barb wire, as in the case of wire nails, was falling more rapidly than that of steel billets. In very many cases the fluctuations seem to go almost regularly with the price of the billets. Since the organization of the Steel and Wire Company, in 1899, followed by that of the Car-

negie Company and then that of the United States Steel Corporation, there comes a decided change in the appearance of these lines on the chart. It will be noted that the price once established is likely to be maintained for a period of some months without any change; that there comes then a change, either up or down, and the price is again maintained in some instances for nearly two years. Although these prices correspond in a general way to the prices of steel billets, those prices vary almost from month to month, while the prices of these finished products change much less often, giving a marked steadiness of prices.

It will be seen that the price of neither smooth wire nor of barb wire followed regularly the price of wire nails at the time of the wire nail pool, in 1895-1896, although there was a sudden increase in the price of barb wire, followed by an immediate decline.

Through the ownership of patents, the American Steel and Wire Company, now owned by the United States Steel Corporation, has a legal monopoly in barb wire, quite regardless of any effect of combination so that we should expect a wide margin between the price of steel billets and of barb wire. It is possible that this margin, which is so much wider than that between the billets and either smooth wire or wire nails, is due in part to an increased cost of manufacture; but it is probably due also to this legal monopoly, coming from the ownership of the different patents. Although the difference between the price of barb wire and of steel billets increased very rapidly during 1899 and the earlier part of 1900, its increase was not much more rapid than that in the price of wire nails and of smooth wire. There can

be little doubt that the great increase in the price of all these products was at that time due chiefly to the increase in the price of raw material and the strong demand. The leadership of the market, however, seems to have enabled its managers to make the best use of its opportunities, for the margin as well as the price increased rapidly from the date of the combination. After the formation of the United States Steel Corporation, however, a new policy seems to have been adopted —that of seeking good profits, but not extraordinary ones. The steadiness of the margin, as shown in line E after the formation of the Steel Corporation, is quite noteworthy, as compared with the enormous fluctuations for the six or eight years preceding.

The organization of the new Carnegie Steel Company was effected about the middle of 1900, but this apparently produced little if any effect upon prices. Early in 1901, with an increase in the price of steel billets and of pig iron, came also a slight recovery in the price of steel rails and of steel beams. Rails had fallen in the latter part of 1899 and through the first part of 1900 from $35 a ton, where, with the exception of one month, they had been maintained for nearly a year, to $26. About the time of the organization of the United States Steel Corporation, in February, 1901, the price was raised to $28. From that time until almost two years after the outbreak of the European war there was no variation. Then there was a rise from $28 a ton, first to $33 and shortly after to $38.

This absolute maintenance of an unvarying price for steel rails, through a period which lasted fifteen full years regardless of fluctuations in the price of pig iron,

of coal, of ore, of wages, is perhaps the most striking manifestation of the steadiness of price that our history affords. During the brief period of strong demand and of increased prices in 1902 and the earlier part of 1903, when it would have been easily possible to increase the price of rails by several dollars a ton, no change was made; on the other hand, during the years 1903 and 1904, in the period of depression, when the demand was relatively small and the prices of other grades of iron and steel were falling, the price of steel rails remained unchanged. During the succeeding years of 1905, 1906, and the early part of 1907, with prices in all lines rapidly increasing, with the demand for not merely other kinds of steel but also for steel rails rapidly on the increase, in some instances the demand being greater than could be met for prompt delivery, the corporation still refused to increase the price, although its smaller rivals would have been glad of the opportunity; and again, after the crisis of 1907, throughout the period of depression of 1908 and further throughout the period of recovery of 1909, although the demand fell off to almost nothing after the crisis, and finally with a strong demand through 1909, the price was maintained at the unvarying rate.

Again, after the war broke out in 1914 and prices of all kinds of steel were promptly raised with prices higher than any since 1900, the price of steel rails was still held steadily down for a period of some year and a half when at length, following the tremendous increase in the prices of raw materials, the price of rails increased though not proportionately.

If one were to compare the margin between the price

of steel rails and of its normal raw material, pig iron or steel billets, it would appear that the marginal cost of manufacture plus the profits had at times increased with the fall in the price of raw material, and at other times had decreased rapidly, as the price of the material, iron and steel, had increased. However, it appears further that the producers were determined to allow the railroads to rely absolutely upon one fixed price, which it considered reasonable, regardless of demand or of other influences which might normally be expected to affect the prices.

Indeed, it is generally asserted that the suggestion of a fixed price known long in advance came from the railroads themselves. Inasmuch as the prices of rails are an extremely important factor in the construction and maintenance of way, it is very important that the railroads know what they can count upon as regards the price of rails. After careful consideration long-term contracts were made between the railroads and the different rail manufacturers of whom the Steel Corporation is the leader. Then, some time before these contracts ran out, they were renewed for another long period. The agreements were not then, as has been so often supposed, between the different manufacturers to maintain prices, but between separate manufacturers and the railroads. It was natural enough that the Steel Corporation should take the lead in these contracts. It was equally natural that the other manufacturers supplying the railroads should adopt the same price. They could not well increase the price and it would not pay them to lower it enough, at any rate, to start a trade war. The railroads then are perhaps

equally responsible with the manufacturers for the invariability in the price of rails for so long a period.

On the other hand, when one notes carefully the exact conditions under which steel rails have been produced since the organization of the Steel Corporation, it is seen that ordinary changes in price of iron and steel as a matter of fact need not affect materially the prices of steel rails. The United States Steel Corporation and practically all the other producers of steel rails own their mines, produce their own ore, furnish their own coal and coke, own ships and in one or two cases railways and, in fact, supply everything needed for the production of steel rails. Excepting, therefore, changes in wages or possibly in the price of some of the implements or means of production or transportation, such as railways and steamships, it can hardly be said that the cost of their material varies with the market prices of iron or steel. If they were to determine their prices of steel rails by the market price of pig iron or steel billets, such prices would not reflect changes really brought about by the conditions of production under which they are working.

The policy which the Steel Corporation has openly announced and which these charts show it has rigidly maintained—of a steady price which it considers reasonable—is, it will be noted, to a very considerable extent dependent upon this most important fact—that it controls also the mines which furnish it with practically all of its raw material.

After the panic of 1907 and during practically all of the year 1908, the United States Steel Corporation and the other large steel interests worked closely in har-

mony, in order to prevent absolute demoralization in prices. During the last few months, however, of 1908 and the beginning of 1909 it was clear that the consumers of iron and steel were placing orders only for such material as they actually needed for immediate use, believing that the conditions existing were artificial, that the prices were being maintained unnaturally, and that they might break at any time. Beyond question many of the smaller manufacturers and quite possibly the Steel Corporation also, although they were openly maintaining prices, had been shading these prices in special instances. On February 18, 1909, a meeting of practically all the leading steel interests was held in New York City. After a careful discussion of the market conditions, it was decided to abandon all further attempts to hold prices. The next day Chairman Gary, speaking for the Steel Corporation and practically for the other interests as well, declared an open market. A scramble for orders began, all competing vigorously for new business. All the large steel interests with their magnificent selling organizations searched the country for orders. Structural materials of all kinds were reduced $6 to $7 a ton, steel bars $4 to $5, pipe $10 to $12, and other finished material in like proportion. The price of steel beams dropped to $32.03. The results showed no special advantage of the United States Steel Corporation. In spite of its efforts its percentage of output remained practically the same with on the whole a tendency to lessen.

The lower prices at once started orders, many of them of large size. This started immediately the iron mills. Prices began to increase; heavy orders were

taken, although until the prices improved consumers as a rule were not allowed to book orders for a long period ahead. In May and June, as the order books filled, the larger companies became more independent of the consumers' demands. This increased the orders still more, so that by October many of the plants had their full capacity in demand for the rest of the year and for the first quarter of 1910. During the last three months of 1909 the largest establishments were accepting business only for shipment at the convenience of the mill. The last half of 1909 was very satisfactory to the steel trade.

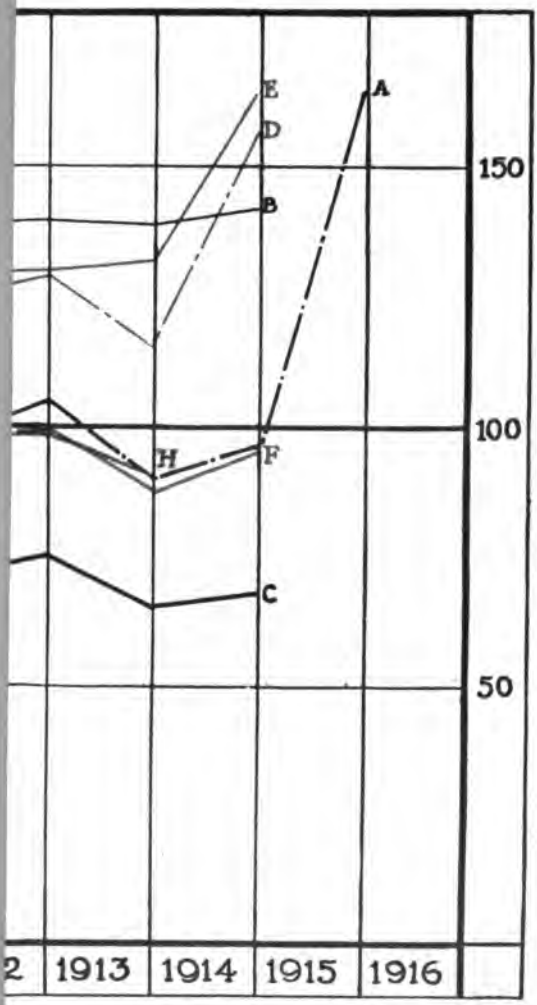
The effect of the United States Steel Corporation seems to have been primarily to steady prices and to maintain more nearly a rate of prices of the finished product dependent upon the costs of the leading raw materials so far as that can be readily determined. During its earlier years from 1901 to 1907 in many of the leading finished products the same price was maintained absolutely for a period of months, sometimes even of years, and the other producers in the market generally followed substantially the lead of the Corporation. Since 1909 this policy does not seem to have been quite so rigidly adhered to, with the exception of the price of steel rails. It is to be noted, however, that the margin between raw materials—steel billets on the chart—and the finished product, such as wire nails and similar products, has been much more nearly uniform than before 1909 and has been much steadier than during the earlier periods before the Corporation was organized.

If now, in order to measure as nearly as possible the

influence of combinations on prices, we study the purchasing power of steel as compared with general commodities, we obtain interesting results. Inasmuch as the United States Steel Corporation is the largest industrial combination and as it has been the subject of prosecution by the United States Government, it has seemed best to give special attention to steel prices. Chart VII illustrates the purchasing power of a unit of seven different steel commodities. These were selected so as to illustrate the various kinds of steel products (Bessemer pig iron, No. 2 foundry pig iron, Bessemer steel billets, steel rails, beams, tank plate, black sheets) and to make a comparison of prices here, in England, and in Germany. The prices shown on the chart are the relative prices from year to year compared with the prices from the years 1895 to 1900, averaged as a base. On the chart this base is shown by the line marked 100 and the other lines are represented in their variations from this base.

The purchasing power of a unit of these seven steel commodities in terms of general commodities is indicated. Steel in the United States is compared with the index number of the United States, steel in England with the index number of that country, and steel in Germany with the index number of Germany. On the chart then we see line L, which represents the purchasing power of these seven commodities in Germany starting somewhat above the base in 1900. It soon fell to the base. In 1901-1902 and part of 1903 it remained below. Then, going first above, then below, returning above again in 1907, it remained above the base until in 1911, the last point at which we can secure the

nmodities)



H = Relative price of 7 iron and steel commodities
K = Relative price of commodities (Index No.)
L = Purchasing power of 7 iron and steel commodities

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index number, it was standing some 20 points above the purchasing price of the years 1895 to 1900. Tracing now the red line F, showing the purchasing power of these steel commodities in Great Britain, we find that at the end of 1914 with certain fluctuations above and below the base line, mostly above it, it stood at the end of 1914 some 35 points above the base line. On the whole, then, in both Germany and England, the prices of steel averaged higher than the price of commodities in general and a ton of steel would during most of this period buy more commodities after 1900 than during the five years preceding.

Quite different, however, is the course of prices in the United States. In the first place, noting the black line B, which represents the index number showing prices of general commodities in the United States, we find that starting in 1900, some 12 or 15 points above the average of the prices from 1895 to 1900, it steadily increased until at the end of 1914, the last date when the figures can be secured, it stood at about 140. On the other hand, the average price of these seven steel commodities started in 1900 two and one-half points below the average price from 1895 to 1900. Since that time it has never reached the base. After the formation of the Steel Corporation in 1901, the prices averaged lower than before, and while there have been slight increases from time to time, on the whole prices have been steadily downward. In 1912 the average of these prices was some 30 points below the base, and at the end of 1914, the last date at which we can secure the index number for commodities, the purchasing power of steel still remained some 20 points below the base line.

If then we were to assume that the United States Steel Corporation determined prices of steel in the United States, we should be led to the conclusion that it had willed that the prices of steel should be steadily maintained at a price lower than most other commodities and that its effect could be nothing less than beneficial.

That, however, is probably too optimistic a conclusion. The index number in the United States is made up of a large number of commodities (252), food products and many other raw materials, of which the natural tendency is to increase in price as population increases in accordance with the principle of diminishing returns in agriculture. We should expect, therefore, that manufactured commodities, especially those highly manufactured, would not on the whole show an increase in prices through a course of years quite so great as that shown by the index number representing general commodities. As nearly as we can judge, then, the Steel Corporation has simply followed the normal economic course of its influence upon prices. As has been indicated, however, perhaps the power to determine for short periods prices in the market, has had some effect. In the long run, however, it is dominated by economic forces as are other producers. It is a striking fact that its purchasing power has steadily decreased while the purchasing power of steel in Great Britain and Germany have both increased as compared with general commodities. This certainly seems to show almost beyond doubt that the corporation has not controlled prices to the detriment of the community. In Germany there is a large steel syndicate and in Great Britain steel manufacture is in few hands. They cer-

tainly have seemed to dominate the market more than has the Steel Corporation. In this case, again, however, we should not forget that the index numbers in Great Britain and in Germany do not represent exactly the same commodities as does the index number of the United States, nor are the commodities which they do include valued in just the same way. In Great Britain 56 have been considered, in Germany 157. While, therefore, the indications are clear, they are not probably absolutely exact.

GENERAL CONCLUSIONS

This study of prices covering a number of different industries and a series of years is a sufficient basis for certain general conclusions regarding the effect of large industrial combinations on prices. An industrial combination controlling so large a percentage of the entire output that consumers are compelled to buy at least a considerable portion of their supply from the combination is able for a period of time to affect materially prices in the market. If it reduces its prices, practically all of its competitors must meet its rates. If it increases its prices, under ordinary conditions its competitors will raise their prices to substantially the same rate, although they may shade their prices somewhat to make certain their sales. In case there is an oversupply of goods on the market, an effort of the combination to maintain its prices will result in a gradual loss of its customers to its competitors. The experiences of the United States Steel Corporation, of the American Sugar Refining Company, and of other combinations justify this conclusion.

In the earlier days of the combinations there was apparently an attempt on the part of some of them to secure a monopoly of the market. At times they cut prices to force their competitors either to go out of business or to join the combination. After they had thus strengthened their hold on the market, they attempted to recoup their temporary losses to a considerable degree. The invariable result of this course seemed to have been to call again into the market within a relatively short time strong competitors who then in turn forced them to repeat the process. The result has been to establish fairly generally the business policy of not attempting to secure anything like a complete monopoly of the market, but rather for the combination to fix its prices at such a rate that it may secure under normal conditions substantial profits while its competitors are still able to live and prosper. Although the competition is a real competition in certain instances, at any rate, it is no longer the cutthroat competition of the early days of the combination.

In the cases of the United States Steel Corporation and the American Sugar Refining Company their percentage of the entire output of the country has, as we have seen, steadily diminished for the last fifteen years, although they still maintain their position as the leading factors in the market. They do not, however, maintain a complete monopoly.

Contrary to a popular opinion, a careful study of the charts indicates that the effect of these combinations, taking their history as a whole, has not been to increase prices to the consumers, although at certain times for relatively short periods they have doubtless increased prices.

The last few years has been a period of rapidly increasing prices in most lines of production, especially perhaps in food products. If we follow the course of prices of the products of these great combinations represented on these charts and compare them with general prices as shown by the index numbers, it is an interesting fact that the purchasing power of a unit of steel or of sugar or of refined petroleum has, on the whole, decreased during this period of rising prices. This fact seems to bear out the contention that on the whole the combinations have it in their power through their savings to lower prices and actually do in the long run at times attain that result.

One should not, however, reach too positive an opinion. The index number is made up by combining the prices of very many products, and the conditions applying to any one product may be so exceptional that conclusions regarding it, if based on the index number, might not apply. Nevertheless, the study of the effect of the combinations on prices when the price of the special product is compared with the index number is doubtless far more nearly accurate than when merely money prices are considered. The fact, then, that the prices of the great necessities, steel, sugar, and oil, one a highly manufactured product, the second largely an agricultural product, although in part manufactured, and the third substantially a mineral product, all show the same tendency as compared with general prices, furnishes a pretty strong indication as to the probable effects of industrial combinations in general. The further fact that the conclusions drawn from the chart are those that had been reached twenty years

ago by reasoning from general economic principles gives added weight to the conclusions.

The total result seems to be that these great combinations do not, in most instances at any rate, attain anything like a complete monopoly in any line of work unless they have the protection of patents or some special natural monopoly advantage. They do, however, maintain a leading position in the market which enables them if they so desire, as they quite generally do, to steady market conditions.

It seems probable that in lines of industry which do not require special individual skill in many processes of manufacture, they could probably secure a substantial monopoly, as they doubtless do have, in certain opportunities, economic advantages. To secure such monopoly, however, would mean that they must hold their prices steadily so low that their competitors could not live, while they could survive. Their advantage, however, is on the whole so little that they will normally prefer to follow the old competitive policy of "live and let live" and content themselves with a mere leadership in the market. This gives to the public probably a sufficient protection against extortionate monopoly practices with the benefits at the same time of large scale production. It is fair to add that this tendency in the United States has probably been strengthened somewhat by anti-monopoly legislation, which has in some cases gone so far as to be injurious to the public, and also by public sentiment and apprehension regarding future legislation. Economic principles, however, would have been sufficient without special legislation to produce the same general results outside of legal and natural monopolies.

CHAPTER X

THE TRUSTS AND THE WORKINGMEN

IF THE statements made in the preceding chapters regarding the savings of the wastes of competition are true, it is evident that industrial combinations, through these savings, create a fund from which the wages of laborers could be raised, provided it seemed wise to the managers to raise wages instead of increasing their own profits or lowering prices, or provided the laborers were able to enforce a demand upon their employers for higher wages.

Experience also seems to show that, when Trusts were first formed at any rate, the wages of their employees, in a good many cases, were raised, although later at times men have been apparently thrown out of employment arbitrarily by the sudden closing of plants. When the Whiskey Trust was first organized in 1887, the wages of several classes of employees were comparatively soon raised. Mr. Greenhut, the president of the Trust, in his testimony before the Committee of Manufacturers of Congress, testified to this effect.* He expressed the opinion that it was but just to give to the employees part of the benefits which were to come from the new form of organization. He stated further in conversation that public opinion was strongly directed against the Trusts on the whole, and that it

*50th Congress, Second Session, H. R. No. 4,165 pp. 66, 67.

was perhaps wise to show that the managers of these organizations did not intend to conduct them selfishly for their own benefit solely, but that they wished to distribute the advantages fairly among those engaged in production.

It is also in evidence that the employees of the American Sugar Refining Company early had their wages increased somewhat, although as their labor is largely unskilled the increase was not at all great. Since the outbreak of the European war there has been a large increase, almost 50 per cent.

According to testimony from both the managers of the Standard Oil Company and from its opponents, that company has been in the habit of paying to all its employees regular standard wages, and in many cases of paying to those who showed exceptional diligence or skill in their work very high wages. It is certainly a fact that they often keep their employees for a series of years, and that in the case of superintendents or managers or those acquiring special skill the ablest men are usually chosen, and the wages or salaries paid are high. The company has at times increased wages voluntarily. Of late years, however, there have been a number of strikes accompanied by violence at Bayonne and elsewhere. It is evident that their wages have not been put up materially above usual rates. One may note that dividends were more than 40 per cent. in early years and that the Government prosecutions with forced changes in the form of organization of the company have apparently not lowered profits.

The combinations in the iron and steel and tin plate industries particularly have all of them in various in-

stances increased the rates of wages; in 1916 three times to various groups of employees by 10 per cent. each time. At times some of these companies have also closed plants without warning. The president of the Tin Plate Company testified shortly after its organization that the average increase in wages in that industry had probably been 15 per cent. The American Steel and Wire Company had increased its wages in many cases as much as 40 per cent., and in the other related industries the wages had been increased all along the line. It is, however, just to the managers themselves to state that they did not ascribe this increase entirely, if at all, to the formation of the combination. They said rather that it was due to the prosperous condition of the business, to the facts that owing to the heavy demand, prices were high, and that the employees demanded higher wages. It seemed to them wiser to make arrangements with their employees for an increase of wages than to have trouble with them, especially in so prosperous times. In consequence, terms were made, though, in some instances at least, the demands of the workingmen were not fully granted, the increase being rather a compromise than a surrender. Some of the employers said distinctly that these increases in wages had not been given excepting as the result of demands on the part of the workingmen themselves; that the combinations made no pretences toward generosity. Shortly after the organization of the United States Steel Corporation there was a strike in many of its mills. An effort was made to compromise which had the approval of many of the labor leaders, such as Mr. Gompers, Mr. Mitchell, Mr. Keefe; but

the local leaders refused to compromise and later settled on worse terms than had been offered.

The corporation from the beginning has not as a whole been favorable to trade unions, though as we have seen they were recognized in some of its subsidiary companies. Strong efforts have been made to secure the good-will and continued service of its workingmen in other ways. To certain classes an opportunity is offered to buy preferred stock in the company at especially favorable rates. (In 1915 about 50,000 workmen out of some 240,000 were stockholders.) Bonuses are offered to many of the men in charge of plants and holding responsible positions, together with pensions for old or injured workmen. Great pains are taken in most of the plants to provide for the safety of the men; emergency hospitals are maintained in many of the plants; playgrounds for children of employees, and district nurses for the sick; sanitary water supplies and toilet arrangements are furnished; lunch rooms have been established with good inexpensive food, and every effort is exerted to see that all is done to promote the safety and welfare of the employees that can be thought of by a department whose business it is to make a study of the question, and by committees of employers and workingmen who work together to develop the general health and welfare of the men.

As a result of a threatened strike some time ago in which the workmen seemed to the management unreasonable, it was finally adopted as a policy of the corporation that it would not deal with unions as representing the men. Many of the men, the officers of the corporation say, prefer not to belong to unions, as they

are satisfied fully with their treatment, and think they are now deriving all the benefits that could come from a union. The combination avers that it intends to give freely all or more than unions can secure by organization.

It is probably true that in most cases the relations between the combinations and their employees have been and will remain substantially the same as those between the officers of any large corporation and their workingmen. In individual instances wages may be increased without special demands being made, but that will probably rarely be the case. The year 1916 has seen a number of instances of this kind like that of the United States Steel Corporation mentioned above. In other cases, while not acting till requests have been made by the men, the combinations have promptly granted the requests as did, for example, the American Smelting and Refining Company and the American Sugar Refining Company. The year 1916 is, however, so exceptional that one cannot safely draw general conclusions from its experiences. The increased wages, so easily won, have sometimes resulted, the employers state, in decreased efficiency of the men by 10 to 20 per cent. Such a result is by no means desirable.

As the combination has secured additional power in many instances over the producers of raw material, it is fair to ask whether this power will not extend also over the workingmen, so that in the event of a disinclination to meet their demands for higher wages or an inclination to lower their actual wages, the combination would not have more power in carrying out its wishes than would competing corporations. There seems to be little doubt that,

speaking generally, other things being equal, this would be the case. If the combination is substantially the only employer of labor in its special line of industry, men trained in that line of work and untrained in others would find practically only the one employer to work for. This would to a considerable extent put them in the power of that employer in the same way that the consumer is to a considerable extent within the power of the combination which controls 80 per cent. or upward of the output of any industry of which he must buy the product.

So far as can be gathered from information as yet accessible, while there are exceptions, as we have just seen, nearly all of the combinations have assumed no hostile attitude toward trade unions, but have rather dealt with them in accordance with the wishes of their managers. Chairman Gates of the American Steel and Wire Company insisted positively that his organization did not recognize trade unions and would not recognize them. It would deal with its employees as individuals and not with representatives of the union. On the other hand, nearly all of the other iron and steel combinations early treated willingly and readily with the representatives of organized labor. This was true of the American Tin Plate Company, of the National Steel Company, of the American Steel Hoop Company, of the Federal Steel Company, and perhaps of others, there being apparently on the part of the managers of all of these companies no hostility whatever to labor organizations, but a perfect readiness to meet them and to deal with them, as do most smaller corporations or individual employers. Later, as has just been noted, the policy changed.

In case of a contest arising between the trade unions and one of the greater combinations, it seems evident that, unless the unions have greater power than is usual, the combination, having under its management a number of manufacturing plants, perhaps from twenty to forty, will have a decided advantage over the individual corporation with only one or two plants. If a strike were threatened in one of the plants of the combination, it could, with comparatively little difficulty, transfer its orders to its other establishments and close temporarily the one involved without a loss which would in any degree approximate the proportionate loss of a single corporation closing its one plant in case of a strike. This threat is said to have been made in the case of the smelters' strike in Colorado some years ago. The strikers were told that if they persisted in their demands the organization would close the establishment in which the strike was threatened and transfer the orders to other plants. In the case of the steel strike in 1901 the company was able by shifting its orders to carry on its work with relatively little loss. In another later instance where the unions were unusually persistent and, as the corporation thought, unjust, it eventually removed the machinery and dismantled the plant rather than yield. As the plant was only one of many, it was able to do this without serious embarrassment.

When trade is dull, too, the combination in like manner is likely, rather ruthlessly it seems at times, to close part of its plants with practically no warning. Individual employers with only one plant are likely to hesitate somewhat longer. The effect on the laboring class as a whole of a checking of production in many

independent plants is probably as great as in the effect of closing entirely one or two plants by a Trust. It does not attract so much attention.

If the trade unions were to extend their membership until the one union or federation of unions had in its membership practically all of the workers in the country in one line of industry, the situation would be entirely changed. Under those circumstances a strike in one establishment would be immediately followed, if need arose, by a strike in all of the establishments of the combination, so that not merely would the work stop in the one place, but in all, and the effect upon the employer would be as great, or even to a considerable extent greater, than in the case of a strike against a single corporation which possesses but one manufacturing plant.

Many of the leaders of the trade unions, such as Samuel Gompers, the president of the American Federation of Labor, seem to think that it will be by no means impossible for the trade unions to perfect their organization as satisfactorily as can the organizers of capital improve theirs, so that they will be able to resist the encroachments of capital without difficulty. And, again, if the organization of capital by means of its savings creates a fund from which the laborers could draw if they had the power, these union leaders are inclined to believe that they can secure their full share of the funds thus brought about by the increased savings. They, therefore, assume no especially hostile attitude toward the combinations, which they consider inevitable, but are, on the whole, rather inclined to favor them, thinking that the laborers have the power to secure

their proper share of any savings which may accrue to the community from combination. In 1916 the demands of the railroad employees seem to have met with the full approval of the American Federation of Labor. The union of the great railroad brotherhoods with the Federation would give to the labor combination a power in many ways more extensive in its range than that of any capitalistic combination yet organized.

It will be noted, of course, that if wages are thus increased to the wage earners, the result must inevitably be a checking either of the profits of the employer, or, what is perhaps more likely, of the lowering of the price to the consumer.

The real contest in many cases when laborers press their employers for higher wages is with the consumers. Wages can be increased if prices rise; and employers not infrequently find the consumer more docile than the laborer. Under such circumstances the workman at times, as consumer, gives back to his employer a good part of what he has received from him as an increase of wages; but even in this case the new distribution proves to the advantage of the laborers as a class. Not all is paid back, for there are other consumers.

If by combination of capital with its saving of energy a new fund of wealth has been created, the capitalist and employer will try first to take it, and will claim that it is theirs justly, for they have by their intelligent action created this fund. The workmen will strive to secure it in the form of higher wages, and claim that it is justly theirs, for some of them have been thrown out of employment to make it, and theirs is the

labor that is used to better advantage. The consumers will try to secure it through demanding lower prices, and they, too, will try to justify their claim. These savings, they say, would not have been possible save under modern social and economic conditions and laws, for which society as a whole, and no one special class, should have the credit.

The actual disposition of the fund will be arranged by struggle. If the combination does not succeed in holding competition down, the largest part will probably in the long run get to the consumers in lower prices, though, at times, as indicated in the last chapter, the employer will take it and probably be forced to divide with his workmen. If competition is kept down, the employer will take the larger part at first; but he will be compelled soon to give part to the wage earners, if they are well organized and insistent, while the consumer, too, will probably eventually get part under the influence of a threatened competition. In the report of 1915 of the United States Steel Corporation, Chairman Gary in explaining the reason for not paying a dividend on the common stock said that if that dividend had been paid, it would have been necessary to lower wages and that the Board decided it was better and wiser that the holders of common stock forego their dividends rather than that wages be lowered. The stockholders present agreed with him. In many of his reports he emphasizes the desire to work with and for the workingmen and in many instances the workingmen respond with the assertion that the Corporation is an employer of the very best type.

It will probably be true that, in the case of a contest

between organized capital and organized labor, the sympathy of the public will be on the side of labor; so that whatever benefit comes to either side from the pressure of public opinion is likely to accrue to the laborer. There is, to be sure, on the part of a good many a prejudice against labor unions, and particularly against those that have assumed great proportions and acquired great strength. It is possible that public opinion might even turn against them, provided they were to control substantially all of the workingmen in any line of industry. But it is much more likely that, for a long time to come, the aggressions of capital will arouse much more hostility on the part of the public than those of labor. In this contest, then, between the Trusts and the laborers, the advantage of public opinion will remain chiefly with the laborer. Contests between the Trusts and their employees have rarely arisen on a large scale in spite of the cases named, if we except the great coal strike of 1902, and the strikes against the Standard Oil Company. The great strikes in the cotton industry at Lawrence, Mass., and in the silk mills at Paterson, N. J., were not against an industrial combination and the railroad controversies are not to be considered here.

Attention has already been called to the fact that certain classes of workingmen, such as commercial travellers, are no longer needed in so great numbers by the combinations as by the separate competing establishments. It will be recalled that the Whiskey Combination was able to dispense with the services of some three hundred travelling men upon its organization; that the American Steel and Wire Company was able

to discharge some two hundred travelling men; and many other similar instances have been found.

Naturally the travelling men themselves, and in many cases others, are inclined to think that this discharge of travelling men is in itself a serious industrial evil. Reflection, however, will show that if the work is really rendered no longer necessary in order to supply the needs of consumers, or if the work can be equally well done by fewer men, the saving of this labor is a distinct industrial gain similar to that which is found upon the introduction of a new machine. It is true, of course, that suffering is likely to be the lot of those discharged; as, in earlier days, upon the introduction of the power loom, many of the weavers were reduced to poverty, even to starvation. If, however, as seems to be the case, a real saving is effected by combination, though individuals may suffer, the working classes as a whole will be benefited, not merely by the reduced price of the article itself (if the Trust permits it to be reduced), so far as they are consumers, but also, within a comparatively short time, by the increased demand that will come for their services through the increased demand for the goods brought about by lowered prices. The advocates of the combinations do not hesitate to claim that this will be the effect, and any careful thinker will be inclined to agree that if the saving is a real one this must be the case, unless the Trust itself absorbs all the savings.

Aside from the commercial travellers, however, the class of employees that seems to be injured most is that of the superintendents or of the higher officers of the corporations which enter into the combination.

In not a few instances, many of the officers have been removed.

Judge Gary, formerly president of the Federal Steel Company, testified before the Industrial Commission that large savings had been effected through the displacement of unnecessary officers in the companies which entered the Federal Steel Company, and that some gain had also been made by the reduction of the salaries of officers that remained, inasmuch as they were given less responsible positions. He submitted a table showing the number of employees of all classes during the years 1898 and 1899, with their comparative wages. This showed an increase of 4.76 per cent. in the number of officers and clerks, but a decrease of 6.26 per cent. in their average daily pay, making a slight decrease in the total expenditures. Considering the decided increase in the number of laborers and the large increase also in the amount of business done, that seems to be a noticeable saving.

Mr. Gates, Chairman of the American Steel and Wire Company, testified also to the same effect. The official organizations of the separate plants that are in the American Steel and Wire combination had been to a considerable extent done away with. Each plant formerly had its president, vice-president, manager, and other officers, most of whom had been discharged, the business being put in the charge of the men in the central offices in New York and Chicago and the plants being operated under the direction of district superintendents. He was of the opinion that perhaps 50 per cent. of the high-priced officers had been dispensed with, as well as the two hundred travelling men mentioned before.

The fact that the laborers discharged by the combinations are to a considerable extent superintendents and travelling men, two classes of high-priced laborers, is likely to promote less hostility on the part of the laboring classes than if it were the ordinary workingmen who were discharged. In either case, however, the industrial effect depends, of course, on the use that is made of these savings. If they go entirely to increase the salaries of the officers that remain, or perhaps even in dividends to the stockholders, the savings will be considered of less general industrial benefit than if they go, to a considerable degree, at least, to the public in the way of reduced prices or to the common laborers in increased wages.

The experience so far would seem to show that labor has been made more efficient by combinations of capital; that, owing to the better organization, there is a larger average output per workman; and that the benefits of this increased efficiency for a time at least have been divided between employers and workmen. The price charts seem on the whole to indicate that probably eventually the consumers also have gained in lower prices while competitors—at any rate the strong ones—have not been destroyed. Speaking generally, at any rate, no damage to the laborers as a class seems to have resulted, either in the way of decreased wages, in spite of the classes mentioned before that have clearly been injured, or in the way of less steadiness of employment. In fact, it is probable, as regards the latter feature, that employment may be made, and probably has been made, somewhat more steady, in spite of the fact that in some instances individual plants have been

closed, apparently with no good reason, excepting to shorten the output in order that prices may be kept up, or, worse yet, to affect the stock market. Such acts cannot be too severely condemned. Happily they are not common, and the evil can apparently be reached by legislation. Numerous charges to the effect that the combinations have shortened the output in different industries for the sake of putting up prices have, of course, been made, but a careful study of all the evidence presented in different investigations along this line seems to show that this contention is often not justified. It is doubtless true that in individual cases plants have been closed for the sake of cutting off some one rival; but, generally speaking, plants closed are either unfortunately situated or have not been skilfully managed. The former total output has usually been maintained or even increased though the number of plants has lessened.

If the power of the labor organizations keeps itself commensurate with that of the combinations of capital, it is probable that the tendency toward the combination of these two at the expense of the consumer will, for a time at least, increase. The plan suggested by Mr. E. J. Smith, of Birmingham, England, to avoid strikes and other difficulties between employers and their employees, was of this nature. His suggestion was that combinations complete enough to control in good part an entire industry be made among employers on the one hand and trade unions on the other; that a committee representing both classes fix the relations between them as regards wages, and to a considerable extent also as regards prices, it being understood that wages shall

be fairly high and profits fairly large. In case, then, any new competitor of the capitalistic class comes into the business, by agreement of both parties, prices would be cut to his customers, if necessary, and laborers in that line of industry would refuse to enter into his employ. On the other hand, if laborers in that industry were to increase beyond the normal demand of those in the combination, they would be opposed by the laborers already employed, and the employers in the organization would refuse to give them work. This plan to regulate competition, known as the "Birmingham Alliances," seemed to work successfully for some time. But in 1900, owing to strikes and independent manufacturers, the alliance was dissolved, and later efforts to make such a combination have failed. While this plan has been proposed, and in the judgment of many justified, both in theory and in practice, most efficiently by Mr. Smith, it is nevertheless true that in this country, in Chicago at any rate, similar combinations in one or two lines of industry have been effected, though not complete in form. Some trade agreements continued from year to year between large companies and the trade unions have in part the same effect. The "forgotten man" in this case seems to be the consumer, inasmuch as the rate of profits and the rate of wages being both fixed by interested parties, although called fair, are likely to be higher than in many cases would be considered fair by the consumer.

An attorney of one of the prominent Trusts said some little time ago that, in his judgment, the ultimate outcome of the combinations of capital would be that their profits would be restricted, either by governmental

action or otherwise, to a normal rate of 5 or 6 per cent., and that after this profit was paid the surplus arising from the savings of the combination would be divided between the laborer in high rates of wages and the consumer in low prices. He was not at all clear as to the forces which would bring about this result, beyond the fact that in some way public opinion would restrict closely the profits of the employer to what most people believed to be a fair rate. It, however, seems to be an easier step to secure a combination of employer and employee at the expense of the consumer than of the employee and the consumer at the expense of the employer. If the employer is to be closely restricted, it must doubtless be through legislation.

The late legislation by Congress in the Adamson Act (1916) upheld by the courts (1917) seems to indicate an inclination on the part of the trade unions to exert a more direct influence upon the Government to intervene in their behalf than has been noted heretofore. The statements of the leaders of the unions, however, that President Wilson practically forced this law upon them, and their agreement with the railroad companies in opposition to President Wilson's advocacy of compulsory arbitration of labor disputes, seem to indicate that such legislation will not be common, but that the great combinations of labor and those of capital will in the main settle their relations by mutual bargaining and agreement.

CHAPTER XI

POLITICAL AND SOCIAL EFFECTS

WHATEVER may be the effects of industrial combinations upon prices, or wages, or profits, or investors in stocks, it is thought by many that they have a more subtle, and perhaps on that account more dangerous, effect upon our political and social organization and upon the morals of individuals.

It is a matter of common rumor and almost of common belief that the railroads and the large industrial combinations are able to influence to a material extent the acts of our legislatures and even the decisions of our courts, although these charges now are less common than they were ten years ago. This influence is thought by many to constitute their chief menace to the integrity of our institutions and the welfare of the country.

It is doubtless true that in many cases large sums have been paid by corporations to affect in some way or other the actions of legislatures. The officers of the corporations or their friends, if they speak at all on the subject, are likely to say that "strike" bills have been frequently introduced in the legislatures for the especial purpose of threatening their interests, in order that certain of the members may be paid to withdraw the hostile bill; and that it has been found both cheaper and much more effective to pay the very few people who employ this blackmailing plan than to attempt to

defeat the hostile bill by fair argument. It seems also to be true at times that a bill which may be entirely proper and even beneficial to the public in its nature, but which also favors particularly the interests of some of the larger corporations, may be opposed by the party leaders or by individual representatives, until an amount of money has been paid either to party managers or to enough individual members of the legislature to secure the passage of the bill. A few years since, a bill which was said to be entirely in the public interest, as well as in that of one of the large corporations, could be passed in the legislature of one of our larger states, it was reported, only by the payment of $150,000 to the leader of the party in power. Some of the larger corporations, business men say, expected a few years ago to set aside for such uses a considerable sum to be charged to business expenses. It is encouraging to believe that the public investigations made by several state legislatures, notably, perhaps, the insurance and municipal government investigations in New York together with the pressure of public opinion, have greatly lessened this evil of bribery and undue interference in politics; but that it still exists is hardly to be denied.

Before a committee of Congress, Mr. Havemeyer a decade or two ago testified that the American Sugar Refining Company contributed in some states to the campaign fund of the Republican party, in others to that of the Democratic party, the intention being to stand well with the dominant party in each state. It was presumed that this custom was followed in order that, through the influence of the dominant party, both hostile legislation might be warded off in case of need,

and measures, which, on the whole, were favorable to the interests of the company, might be more carefully considered perhaps than would otherwise be the case.

While it is probable that many individual cases of this kind occur, and that corporations, both in self-defence and for the sake of furthering their own interests, do at times buy members of legislatures, it is likewise probable that the prevalence of this custom is not a little exaggerated by many people, and especially by certain sections of the press. It is certainly true that the character of individual legislators and their faithfulness to their trust are considerably better than is commonly assumed in popular discussion in the newspapers.

Again, direct frauds in weighing sugar subject to customs duties were proved against the American Sugar Refining Company. This fact, however, does not weigh especially against the great combinations as such, however severe it may be against the former officers of this company. Similar frauds are doubtless even more numerous in the case of individual smugglers or of small companies. That is a matter of personal character—not of business organization.

But if we grant that corruption of the legislatures and even of the courts on the part of the large corporations is not infrequent, does it follow that the corporations should themselves be destroyed, or that they are chiefly to blame? Certainly no distinction can be made in this regard (although in other respects, as Mr. Bryan properly showed at Chicago, differences are clearly to be noted) between the capitalistic combinations

called Trusts, and railroads or partnerships or wealthy individuals, and the evil seems to be common to all. The fault seems to be rather with the legislatures and the character of the men whom we, the public, send to them, or with our ethical and social standards, than with corporations as such. If the combinations have good features about them, it would certainly be unwise to attempt to destroy them because our legislators were dishonorable men. A much wiser as well as a much more certain and probably an equally practical measure, would be to endeavor in some way to improve the character of our legislators by better methods of election, or by general education, or to lessen the opportunities, through rules of our legislatures or otherwise, of those who are unscrupulous enough either to blackmail a well-meaning corporation, or to take dishonest pay from a dishonorable corporation. That the political evil exists, is beyond question. That its cause is mainly the Trust and its only remedy the destruction of the Trust by no means follows, although that seems to be a normal presumption by very many.

Of much greater significance on the whole is the effect of industrial combination upon our social organization. The democratic social systems of the United States and of many of the newer English colonies seem to have developed a power of self-control and of self-direction in the individual citizen which can rarely be found elsewhere in the world. This power of self-direction is found to a remarkable extent often in local governments, and in individuals, especially in business men. The chief purpose even of our school systems, in the judgment of many of our ablest and most high-

minded teachers, is to develop among our rising citizens this power of self-control. In fact, M. Demolins, in his most interesting book, "Anglo-Saxon Superiority," ascribes the success of the English-speaking peoples in self-government and in the establishment of colonial systems largely to this independent spirit, which he thinks has been developed in our systems of education, both that of the schools and that of the home, in the inclination of parents and teachers to compel children, especially the boys, to rely upon themselves in all the ordinary emergencies of life.

It is thought by many that competition in industry develops this power of individual self-direction, while the Trust system destroys it. Under the competitive system, each cares for his own. The one who shows on the whole the greatest power of self-reliance, self-direction, and skill—the fittest—is the one who, in the competitive struggle, survives. As his weaker rivals fall out, the plane of efficiency is elevated and the whole industrial structure is raised. This competitive struggle among individuals may be cruel in its effects upon those who lose, but from the strictly economic point of view it, so far at least, has generally seemed best for society, inasmuch as it has resulted in the success of the one most fit whenever the competition has been legal and just.

When, on the other hand, combinations among competitors are first made, the weaker instead of being forced to the wall, are saved, although their establishments may be closed by the combinations, and although they may have been taken into the combination on terms, relatively speaking, unfavorable. When the

whiskey combination was organized with its eighty separate distilleries, of which nearly seventy were almost immediately closed or dismantled, unless in fact they had been closed before, dividends were paid equally upon all the property, although the absolute amounts paid to the stockholders who had put in their plants at low prices were, of course, comparatively small. When, in 1887, the Sugar Trust was organized, the weaker competitors were not forced to the wall, but were taken into the combination, although, doubtless, at a low valuation.

Aside from the effect upon individual character, consider first whether the community loses or gains economically by this apparent preference of the combination to buy up weaker establishments rather than to force them out of existence by a more determined competitive struggle. From the standpoint of the creditors it is probable that there is comparatively little difference in the methods employed. If competition should continue, and the weaker producer be forced into bankruptcy, so that his creditors would receive but fifty cents on a dollar, they would lose by so much. If, on the other hand, with the man's business in the same low condition, the establishment is bought up at fifty cents on the cost price, if the man is honestly eager to pay his debts, the situation is probably not materially different. A man who is compelled to sell to a combination at what he believes to be less than the value of his establishment under the competitive system, may, of course, have feelings of bitterness toward the combination that the bankrupt would not have toward any of his competitors; but the economic result to him and to his cred-

itors would not be materially different. Both lose in either case.

During the continuance of the competitive struggle between rivals who eventually enter a Trust, or between a large combination and its outside rivals who are being gradually forced out of business, prices to consumers are likely to range low for a considerable period. Under those circumstances, it would seem that the consumers, for the time being at least, gain more than they would if the combination were earlier effected, without any of the competitors being driven into bankruptcy. On the other hand, it must not be forgotten that the most vigorous competition is almost of necessity wasteful. While on the one hand the ablest competitors rely upon excellence for their success, many others, especially in the last stages before they yield, resort to questionable practices. Cheap devices are sometimes employed which are likely to result in imperfect goods. The manufacture of shoddy instead of genuine goods is sometimes encouraged. Desperate means to secure unwarranted credits are often resorted to; and the loss from these sources, as well as the direct loss to the competitors themselves, is likely to more than offset the gain to the consumers from the temporary lowering of price until the producers are, many of them, driven into bankruptcy. Besides this, the combination or the surviving competitor is likely, when the fight is won, to recoup his losses by demanding an indemnity, not from the vanquished as does a victorious nation, for that would be a vain attempt, but from the onlookers, the consumers. The victor will ask, too, why the consumers ought not to pay the indemnity.

They have been, through low prices, the beneficiaries of the conflict.

A reasonable competition, which may indeed force out one by one individual producers, is clearly a healthful influence in the industrial community, stimulating the better ones to their best efforts and raising the plane of efficiency. A competition of this nature where, one by one, the weaker competitors drop out and more efficient ones come into the industry from time to time, produces no crisis in that industry. On the other hand, fierce competition among rivals nearly equal, especially when large amounts of fixed capital are involved, not only leads to the wastes already mentioned of ill-advised methods and measures, and losses to practically all of the competitors themselves, but, further, leads to general depression in the line of industry involved. This depression will lead to shifting of capital from that industry into other lines for which, under normal conditions, there is not so great need in the community, and this, in itself, involves another industrial loss. For these reasons it is probable that, when competition is of this nature, the community will gain from the economic viewpoint by a combination which stops the competition before it has reached the ruinous stage, even though it does involve for the time being the taking of some plants that are comparatively useless. The value of those plants will, in part at least, be saved by employing them in other lines of industry; but even where the loss is temporarily a total one, it is likely to be less to the community as a whole as well as to the combination itself than would result from a continuance of the competition to the ruin of a large proportion

of the competitors. When unfair and illegal methods of competition are employed, such as the use of discriminating rates on railroads, or any dishonorable practices, the above discussion does not apply. Such unfair and illegal methods put the question rather into the field of criminal law or social ethics. Such practices are under no circumstances to be justified or defended.

But aside from the effect of the avoidance of bankruptcy on the part of numbers in the community, it is often urged, and that with much reason, that under the present system of production on a large scale, an individual cannot start independently in business, unless he has large capital or is in some way personally in favor with the managers of the larger combinations. We have, therefore, in the community, it is said, a few magnates in productive activity, together with multitudes of men of sound judgment, capable of managing large enterprises independently, who are reduced to the position of employees—their individuality dwarfed, the development of their manhood checked—all this, of course, to the detriment of the State and of society.

So far as this contention is true (and there is much truth in it), it is perhaps the most serious objection that can be made to the present system of industrial combinatio . It is a well-known fact that the high officials in our large insurance companies, in our railroad systems, in our banks, and in other great industrial enterprises, do give opportunities at times to their children and their friends for advancement in the direction of industrial enterprises which could not so readily at least be secured by others. On the other hand, it is doubtless true that if these scions of the industrial

magnates show themselves incompetent, they often will be soon removed from their positions, or dropped into others of less responsibility, or held permanently in positions involving little power of final decision, while the more capable men who have earned their positions take their places. If such a course is not taken, the rivalry of old or new capital will soon make itself felt. The savings of combination before mentioned will be more than offset by the losses arising from incompetent management, and the combination will fall before its smaller rivals. That this tendency in great corporations toward nepotism is strong cannot be doubted. There is reason to believe, however, that the variety of interests and the pressure of opinion within the combination have been and will be sufficient to hold such a tendency within safe limits. Moreover, the same evil is found, possibly to an even greater degree, in the small institutions.

Again, the late popular demand for efficiency in business methods has led in very many cases to a much closer study of costs of production in many fields and has thus so clearly pointed out the inefficient man, whoever he may be, that his position has become less secure.

On the other side, however, of this vital question, there are one or two matters for consideration. Many men are now trying to work independently who are industrially fit only to work under direction. Any careful business man or observer of business conditions can probably name among his acquaintances men who, good workmen perhaps, are fit to be carpenters or machinists or tailors while working under the direction of

others, but who wish to become and at times do become contractors, or who open stores of their own where they are in positions of financial responsibility as heads of establishments, and who, whenever they secure such independent positions, invariably bring disaster upon themselves and consequent discomfort to their families and loss to their creditors. There can be no question that, from the strictly economic point of view at least, the endeavor of these men to manage a business independently, when they are fit only to be workmen under the direction of others, is a distinct evil. Unless the waste is needed to enable society to select the business leaders, or unless men who work under the supervision of others are deprived of their individuality, the loss is probably great enough to overbalance any gain which society derives from their attempts at managing a business for which they are not fit.

The fact should not be overlooked that persons holding subordinate positions are usually granted much more independence in work than is often thought. In a large mercantile or manufacturing establishment the heads of departments ordinarily have full discretion in the management of their departments as long as they prove successful. Their employers look for results. They are given general directions in order that they may fit properly into their places in the great organization, but they have full discretion as regards the details of management, and in most cases have as great opportunities for showing their originality and for testing their powers of combination and organization as it would be possible for them to have in managing with entire independence a much smaller business.

When a number of small railroads are brought together into a large system, a number of presidents of railroads lose their positions as presidents to be sure, but most of them are retained as division superintendents, managing the same lines of road which before they managed as presidents, employing for the most part the same men, receiving as good pay, and being given almost if not quite as much discretion as before in the general management of their roads. It is true that they must report to a superior, but it must not be forgotten that as presidents of the roads they also reported to their directors, and that their work was subject to criticism even before the combination was made.

Indeed, comparatively few men in important positions at the present time are entirely without responsibility to others. The president of a railroad reports to his directors; presidents and professors in universities, superintendents of schools, heads of practically all governmental departments, are subject to control, and more or less subject to direction. The art of managing one's superiors by tact, honesty, and excellence in service is also an art which develops individuality, perhaps to even as great an extent as the power of acting with entire independence, owing responsibility to none, excepting perhaps to one's creditors through the action of a court. A wise superintendent of schools, to show his power over his trustees, said to a friend some time ago that they had never refused any request that he had made. His thoughtful friend replied, "Then you have been exceedingly wise in making your requests." The wise executive officer has little difficulty with his superiors, and one cannot say that his individuality is in any

way weakened by the fact that he is held responsible by those superiors.

The weakness of most employees is, that they do not attempt to think independently in their work, and that they make no effort to exercise original power in the performance of their duties. There are few positions in which independent thought (not, of course, independent action without consultation) will not count. The employer is rare who will not trust to the fullest extent any employee who shows himself fully worthy of confidence, and who will not give him every opportunity to develop original independent power. Of course the fact is not overlooked that much work is largely routine, but the statements are not too strong when one speaks of opportunities for independent thought under the competitive system as compared with those under the combinations. Under both, the great majority are not expected to do much planning.

The advantages coming to the combination and to the individual manager of a plant from comparative accounting that shows the results of each plant's work in comparison with those of all the other plants are very great. When the central office from its tabulated weekly returns sees that plant Number 1 is falling behind in labor costs, that plant Number 2 is improving its by-products per ton, that plant Number 3 is falling behind in quantity of finished product per ton of raw material, etc., the president and board of directors are able to point out to the managers of the respective plants their strong and weak points with a precision and a degree of effectiveness that cannot well be matched in general competition. Such detailed com-

parative statements of results are as helpful to the individual managers of the separate plants and as much contributing factors to their personal success and development as they are to the profits of the combination.

As the system of industrial combination develops, it seems now that there will be many of these positions to be held by subordinate superintendents, which will be equally satisfactory from the financial point of view as the headship of small establishments, and which in most cases will afford an opportunity for enterprise and independent judgment not materially less satisfactory, while, on the other hand, there will be created some positions which are far greater prizes in the industrial world than could ever be found under the former system of competition; and yet experience has not so far shown whether or not favoritism instead of excellent work may fill many of these places. Eventually, under the pressure of comparative accounting and publicity, there seems little doubt that merit will win most if not all of them.

To those, again, who are of the opinion that the large corporations often compel their employees to engage in practices which are not in accordance with the strictest morals—for this complaint is sometimes made—it may be said that one is as seldom urged to do wrong by his employers as by the system under which he works. The pressure of competition against the individual producer not infrequently leads to misrepresentation regarding credit and to dishonorable practices in methods of manufacture and sale of goods. How many of our taxpayers deal fairly and openly by the State? The system of combination may, and does indeed in many

cases, lead to wrong acts on the part of individuals. If our eyes are open, we may see that it is questionable whether the competitive system leads to fewer. There is much to be done in the way of improving our standards of business morals; and yet it is probably not too much to say that on the whole, whatever the form of our present industrial system, they are improving, in spite of the many evil practices which we see. A high standard of business character probably never before counted for so much as it does to-day.

In estimating the extent of both the economic and social effects of industrial combinations it is essential to note that their activity is limited now to only a part of the industrial field, not more than 25 per cent. at most; and there seems no likelihood that they will in this era, if ever, cover it entirely. So far, at least, they have proved to be most successful, with apparently a degree of permanence, only in those industries which require much capital for successful prosecution; in which the product is uniform in its nature and the productive work of a routine character; those in which the product is bulky and there is a wide distribution of freight; or those in which other somewhat similar characteristics of a special nature, such as very expensive advertising, patents, etc., serve to encourage the combination of capital.

On the other hand, there have been few combinations, as yet, in agriculture with the exception of those engaged in the distribution of the product, such as the California Fruit Growers' Association, coöperative cheese and butter associations, and others of that type. It is true that there has been an occasional corner of wheat

in some one market. In some of our larger cities there have been combinations which to a considerable extent have controlled the supply of milk in their particular vicinities. There is a large combination in the manufacture of flour, but that controls only a small proportion of the market. Speaking generally, food products of all kinds that come from the farm and from the small producer are largely beyond the control of the combinations, though the production of dressed beef seems to form an exception in the opinion of some observers.

So, again, in lines of manufacture in which little capital is needed to start a successful establishment, although there may be large combinations, competition against them is so easy that they comparatively seldom secure control of a very large proportion of the market, and the evils from them to the community can be only comparatively small.

The great mercantile establishments known as department stores have been considered by some as analogous to the great manufacturing combinations. In the main, however, they are quite different. Their chief advantage is that they bring goods of various kinds into convenient proximity to meet the needs of the purchaser. In some instances they have doubtless driven out of business many small retailers. On the other hand, their overhead charges are high; it is difficult for them to give the most careful supervision to their clerks and from the nature of the business they cater to the great mass of the general public. Specialists in different fields will usually serve better the needs of individual buyers who are themselves experts and wish the best service. Many of the great department stores—

in spite of noteworthy exceptions—have not been financially successful, and there need be no fear that they will secure a monopoly of general trade, convenient as they often are, nor that the small man of ability who really knows his field cannot compete against them.

Similar observations can be made regarding the chain stores, especially those dealing in drugs and tobacco. They have the advantage in large working capital which enables them to secure good locations and to buy in large quantities. They are doubtless managed with more skill than are many of the small competitors. But in this case also an individual who is really expert in the field, by his greater interest in his work and the more clearly personal touch in dealing with others, if he has a reasonable amount of capital will find that his advantages will often fully offset those of the chain store.

When goods produced are of such a nature that a person can stamp his individuality upon them—as in all work that is essentially artistic, including even millinery and fashionable tailoring—or when individual work is required in production, it seems clear as yet that there can be no monopoly that will be dangerous to the community, or any monopoly at all, without government aid and support, which can materially affect the life of the community. The monopoly of genius is individual, and cannot be affected by a combination.

Experience only can show the limit of the field of combination. There can, however, be little doubt, on the basis even of our present experience, that its field is considerably more limited than has been thought by

many during the past decade, and that there still remains opportunity to find his place for each one who is capable of independent work. On the other hand, it seems equally true that, whenever the nature of the industry is one which is peculiarly adapted for organization on a large scale, these peculiarities will so strengthen the tendency toward a virtual monopoly that, without legal aid and without special discriminations or advantages being granted by either the State or any other influence, a combination will be made, and, if shrewdly managed, can and, after more experience in this line has been gained, probably will practically control permanently the market, unless special legal efforts better directed than any so far attempted shall prevent. Even when the combinations exist, however, the social effect, while in certain directions exceedingly unpleasant, especially to those who are in competition when the organization begins its work, is yet not all evil. The great corporations afford greater scope for individual power and independent management than has been ordinarily supposed, although they are practically certain to bring most positive injuries to society, unless they can be kept under social control. Despite the fact that the public control has been greatly strengthened of late years, there still remains much to be done both in the way of defining more clearly the field and methods of action of the combinations, and in freeing them from unjust and unwise restriction where these have been carried too far. Although, as has been shown, their power is much more limited in the long run by business conditions than has been supposed by many, and although, as their methods become better known, their influence

will be still more restricted without positive action against them, their power over prices and wages and social and business conditions is still too great to be left in the hands of interested parties without legislative check. One of the leaders of a great combination said of their industry some months ago: "We control conditions." Such power should at least be put and kept under supervision of those who represent society.

CHAPTER XII

INDUSTRIAL COMBINATIONS IN EUROPE

THE study of industrial combinations under the differing conditions in Europe serves to confirm to a material extent the conclusions reached in preceding chapters. It is probable that in Germany and Austria, if not even in England, industrial combinations cover as many different industries, and control as large a portion of the manufactures in each industry as is the case in the United States.

On the other hand, in England only is the form of combination generally that of a single corporation owning many separate establishments. In all of these countries are found numerous combinations of the primitive form mentioned in the earlier chapters, which are merely agreements—often local in their nature—among different manufacturers or dealers to limit the amount of their output or to maintain prices at a rate agreed upon. But in all of the countries also, aside from this loose and often merely local arrangement, there are large combinations controlling 90 per cent. or more of the entire output of a single product within the country named, in many cases having an international influence.

The causes of combinations when they were first developing on a large scale in the late nineties and the first decade of the twentieth century as given by those

who have been most active in forming them and in managing their affairs are substantially the same everywhere as in the United States, showing that the principle of combination itself is one which seems normally fitted to our present stage of industrial development and one which is not dependent upon mere local conditions or legislation.

The desire to avoid ruinous competition was practically always mentioned as the chief cause. In later years in this country, owing to adverse legislation, not only is the cause seldom mentioned, but the form of the combination is adapted to other aims. In Germany, however, where agreements on prices or output are not illegal, this cause is more frequently put in the foreground. With that are associated the various savings spoken of in Chapter III, although naturally some of these savings are dependent to a considerable extent upon the form of combination itself, and therefore in many individual cases are not found. Speaking generally, however, the opportunity of avoiding cross freights, of running plants to full capacity and on full time, of special adaptation of machinery, and specialization of different plants upon special products, with the corresponding specialization of individual skill on the part of the managers and workmen, the common use of patents, brands, etc., the savings in advertising, the lessening of the cost of superintendence, the possibility at times of saving of labor, particularly of travelling men, and the other savings enumerated, are some of them found practically everywhere, and practically all of them are found somewhere in studying the different combinations. Naturally the savings mentioned are

not all of them applicable in every case. Where the agreements cover only selling arrangements, special advantages applying to manufacturing would many of them not accrue.

Certain local circumstances in Europe, rarely found in the United States, are met with which tend somewhat to check combination growth. For example, in most of the older countries, a manufacturing firm is frequently found which has been established for several generations, possibly even for centuries. The members of the family naturally take great pride in their business, and the business itself becomes to a considerable extent hereditary. Often, beyond doubt, through this business inbreeding, careless habits and wasteful methods creep in, and at times the sons or lineal descendants of the able founders of the business prove to have much less business skill than their predecessors. In more than one instance men have hesitated to enter combinations, because, as they said, they had hoped to hand their business down to their sons, but they knew that if a great combination was formed, the officers of which must be selected on the ground of business capacity, their sons must either withdraw or take a subordinate place. From the point of view of economic efficiency, it is doubtless desirable in many of these cases for the firm to be replaced by the combination.

Some of these same influences too, taken with others, such as the corporation laws, the attitude of the courts, and the state of public opinion, while not lessening materially the drift toward combination, have nevertheless affected decidedly the form which the combinations have assumed. Not having yet felt the pressure of competi-

tion to quite so great a degree perhaps as have manufacturers in the United States in many instances, and not having so often the habit of conducting various kinds of enterprises jointly, and, in consequence, of submitting one's individual will in many matters to what seems to be the joint interest of a group, the individual manufacturers in nearly all of Europe seem to struggle more vigorously against selling out or against subordinating themselves to the direction of a single managing head than do the independent manufacturers in the United States. One can hardly ascribe this difference to a greater spirit of independence, in the proper sense of that word, than exists in the United States, as is so often claimed by the foreigners themselves; but a less degree of willingness to abide by the decision of a majority and to cast one's own lot in with that of others seems to be clearly noticeable.

The law has apparently also in all of the countries, although, as will be seen later, there are some apparent exceptions, been ready to uphold contracts to limit the amount of the output, or even to sell goods at a certain fixed rate—contracts which in the United States would be held contrary to many of our anti-Trust laws, and which even would, in certain instances at least, come under the common law principle forbidding contracts in restraint of trade. It has not been necessary, therefore, in order to bring about a uniform management, that the separate establishments sell out completely; it suffices often if they agree one with the other upon the percentage of the entire output that will be produced by each member of the combination, and then put into the hands of a common selling bureau organized in the

interests of all and with its managers elected by them all, the selling of their entire product, as well as the allotment to each of his quota of production whenever a change in circumstances arises.

This is the form of combination most generally found in continental Europe—a central selling bureau, to which is given the power also of fixing the output, while in the organization agreement itself the proportional share of each member in the entire output is laid down.

Often with this general agreement, there are certain local peculiarities or variations dependent upon the nature of the combination itself. For example, in the case of the coal and iron syndicates of Germany, Austria, and France, ordinarily, while the entire product offered for sale within the home country must go through the hands of the bureau, reservation to the producer is regularly made of the material or fuel used within the establishment itself. In the Austrian iron combination each member sells his own product.

In the case of the powerful sugar combinations of Austria and Germany, the refiners of sugar guaranteed to the producers of the raw sugar a certain fixed minimum price. In case the price fixed in the world's market, as represented by the market at Magdeburg in Germany, or Vienna in Austria, went below this minimum price, the refiners made up the difference, and recouped themselves by higher prices to the consumers for the refined product. Such a plan of working for many years proved eminently successful in Austria, and somewhat later similar results were reached in Germany.

Speaking generally, even in the case of the greater

combinations in England, which have assumed the corporate form, it is probable that to the managers of the individual plants a somewhat greater degree of independence is permitted than is the case in the United States. The managing directors of the Bradford Dyers' Association found that in that business, where individual taste is of so great importance, it was wiser to encourage each individual superintendent to increase his sales as much as possible by exercising his inventive skill in producing a special quality of goods. They stimulated him still further to good work by paying only a small fixed salary and then making a large percentage of his income dependent upon the profits of his separate plant. A rigid system of comparative book-keeping among the different establishments was maintained, so that the managing directors and the individual superintendents were able to affect work to a material extent through this stimulus of rivalry. In some cases, such as the Calico Printers' Association, Ltd., it was found that the separate members clearly kept too much individual control to secure the best results. A report was made and a reorganization brought about which gave a much greater degree of centralization of directive power with improved results.

In Austria and Germany there are several combinations, although they are not among the largest, which took the form of corporations, such as the brush manufacturers of Nürnberg and the soda water manufacturers of Vienna, but these are exceptional. In England, on the other hand, the greatest of the combinations have taken this form, and their reasons for doing so are substantially those given in the United States—

that thereby they can make more savings, and they can enter thus more effectively into the world's markets.

Very peculiar in its form, and for the time being exceptional in its methods and results, was the brass bedstead combination in Birmingham, England, organized and largely managed by Mr. E. J. Smith. As a result of much observation, Mr. Smith had reached the conclusion that ruinous competition was often the result of ignorance and careless management on the part of some competing establishments, they never having taken the pains to figure accurately their exact costs of production. He believed that it is not merely good business policy to get fair profits, but that it is also immoral under ordinary circumstances for a manufacturer to sell his goods below cost with the certainty of ultimate ruin before him if he continues the practice. He likewise was of the opinion that the laborers should have an active interest in the business and should prosper with the prosperity of their employer. Acting on these principles, he organized several combinations on substantially the following plan:

In the first place, the laborers of all the plants entering the combination must be organized into a union so that they can act as a unit as well as do their employers. In the second place, each establishment must make a very accurate statement of its actual cost of production, including interest on capital invested, a fair salary to the manager, even though he be the owner, a reasonable amount for depreciation of plant, and even at times a certain allowance to the employer above his actual salary for the added expense to which he is put by virtue of his higher social station. On the basis of

these returns, then, a minimum cost for the product was fixed for all of the establishments, and no one was permitted to sell below a certain percentage above that rate. Each employer managed his own establishment, sold his own goods, acted entirely independently in every way, with the exception that he must not cut his price below a certain percentage of profit on this agreed-upon minimum cost. If, with the market rate thus fixed substantially by the cost of production in the poorer plants, one could make his products cheaper, owing to greater skill, his profits were naturally larger.

The laborers were to benefit also from the combination in like proportion, inasmuch as starting with agreed upon normal wages on the basis of a minimum price and normal profits, they received a bonus of an increase of wages in proportion to every increase in profits made by their employer. The workmen agreed to work for no one excepting employers belonging to the association, whereas the employers, on their part, agreed to hire no one excepting men belonging to this union. It was thus a coalition between employers and employees to secure high wages, and at any rate reasonable profits, although this might well be at the expense of the general consumer. Mr. Smith did not consider one of his combinations a success until it had shown itself able to increase prices. He did not think that the consuming public ought to be aggrieved at any normal increase in price thus made, because he believed that laborers and capitalists are worthy of their hire, and that consumers ought to be willing to pay not merely cut-throat prices, but what he calls "reasonable prices."

He acknowledged that the average profit agreed

upon for the bedstead combination was about 10 per cent. on the entire cost of production, and that in the industry in question a turnover of the capital was expected from two to three times each year, making certainly a profit that would, by most consumers, at any rate, if not by others, be considered plenty high enough. This plan of Mr. Smith's seemed to have worked very successfully for some ten years in the bedstead trade, and to have spread successfully in other lines; but later difficulties arose and eventually the combination was discontinued. The chief difficulties came first from the attempt to prevent the public from getting the benefit of the best methods of production, since prices were fixed really upon the highest costs; and second, that the alliance with the unions was also an attempt to exploit the public by cutting off the normal efforts of the workmen to get their full share of the improvements in the best plants. The high and secure profits eventually called in so many outside competitors whom the alliance could not afford to buy up that it went to pieces leaving the trade in bad condition.

It is probable that in Europe capitalization is, relatively speaking, not so high as in the United States. This is due in part to business habits—more particularly probably to the greater degree of publicity required for corporations as well as for most other forms of business enterprises. In England, when one of the large corporations has been formed, there has been made pretty regularly a careful appraisal of the value of the separate plants as going concerns with a capitalization at a moderate rate of the earnings of the separate plants for several years preceding the combination. It is doubt-

less true that in a good many instances these appraisals have been made high; but so far as one can learn, it has been only in the rarest cases that there has been issued watered stock to double or treble or quadruple the value of the tangible assets, and rarely also has the stock been issued beyond an amount upon which there might be reasonable hope of paying dividends.

In Germany, Austria, and France, whenever the combinations have assumed the form of a stock corporation, the rigid laws have practically held capitalization down to the actual cash value of the assets, estimating the establishment as a going concern, the promoter receiving his pay, if he receives it at all, either in some fixed sum for his trouble or in the profit that would come from selling shares at a premium.

The effect of the combinations in Europe on prices of the product seems to have been, on the whole, substantially that which has been indicated in Chapter IX as the effects of the United States combinations, although the latest price investigations into the purchasing power of the products of the combinations in terms of index numbers indicates that in sugar and steel at any rate the prices have been held higher in both England and Germany than in the United States. Their combinations seem to have had in some cases at any rate more influence than ours. Managers there as here call attention to the savings of combination, and to the fact that at times prices are lowered; but perhaps more frequently, when one considers the matter with them dispassionately, they acknowledge that they believe the former profits were too low, and that their prices have, on the whole, been slightly increased as a

result of the combination. Almost invariably when they began they added that they hoped ultimately to be able to reduce the absolute prices more rapidly than they could have done without the combination; but they expected practically in all cases to maintain the margin between the cost of the raw material and the price of the finished product at a somewhat higher rate than existed before. Practically, however, in every case, from the beginning, they have believed that by their adaptation of the supply of the product to the market demand they would be able to keep prices much steadier than before, and to keep their labor more regularly employed, thus not merely insuring somewhat more secure profits for themselves, but also protecting to a very material extent both the laborers and the consuming public against the ill effects of commercial crises brought on often by unregulated and ignorant over-production. The experience of the past fifteen years seems to have justified this belief; and the readiness with which the great combinations adjusted themselves in Germany and Austria as well as in Great Britain to the exigencies of the great war by either increasing promptly or lessening decidedly their output emphasizes this important phase of the combination question.

More interesting in certain ways than the mere study of domestic prices is the subject of export prices and the relation of the tariff to prices. Of course it has been the custom in most countries, not merely in the export but also in the domestic trade, when customers are somewhat widely removed from the manufacturing establishment and it is somewhat difficult to secure

their patronage, to make particularly low prices in order to get rid of a surplus stock. It has regularly been explained, and doubtless with much reason, that this disposal of a surplus stock at low rates, even indeed below cost, does not increase the price of the product to home consumers, inasmuch as by exporting the surplus the plant can be run to its full capacity when otherwise it is necessary to close it down at intervals in order to prevent an accumulation of surplus stock. The cheaper production coming from running the plant all of the time at full capacity may thus so lessen the cost of manufacture that the domestic product may on the whole sell lower, even though the profit on it is paying for the loss of the export goods, than would have been possible had a much smaller product been manufactured at the increased cost brought about by only a partial use of the producing capacity.

Many persons, however, have been inclined to criticize the combinations by asserting that owing to their monopolistic power they were able to secure abnormally high prices from consumers at home, and that when they sold abroad at somewhat lower rates, they were still not selling at a loss, but were thus showing merely the degree of oppression which they were exercising upon the home consumer.

This argument has frequently been combined with that made in connection with a protective tariff. When in a protected industry relieved of foreign competition domestic prices are kept materially higher than export prices, it is a not unnatural conclusion that the tariff is fostering monopoly, and that the monopoly is making huge profits at the expense of the domestic consumer.

Doubtless in certain cases there is a very considerable element of truth in the charge, but the reply is ordinarily given as above.

Herr Wittgenstein, the founder of the great iron combination in Austria, explained years ago that the protective tariff was needed for the sake of the industry, and had been levied by the government because it was wise. Ought not, therefore, the manufacturer to meet the expectations of the law-givers by adding to the price at which foreign goods might without the protective tariff be sold in the country the amount of the tariff itself? In case this were unreasonable, why was the tariff levied? If it proved unreasonable, let it be lowered. So far as selling the goods in foreign markets at lower rates is concerned, not merely do the iron manufacturers, but many others, say that, as has been intimated above, only by such low prices can they enter the foreign markets at all and dispose of a surplus which, if it had to be sold in the home country, would compel the partial closing of the plants to the great detriment of numbers of laborers, and with the result of increasing decidedly the cost of production.

In the years 1912 to 1916 and especially since the outbreak of the European war in 1914 the business men of the United States have been studying export problems as never before. In consequence they seem to have reached the conclusion that to force their way on a large scale into foreign markets such as those of South America or China, large capital is needed and an exporting organization must be skilfully handled. More than almost anything else this fact seems to have modi-

fied the popular attitude toward the great combinations, until in 1916, the need of combinations, even those of great size and power, seems to be generally recognized as essential to develop the export trade.

The iron manufacturers in Austria and Germany and France have not hesitated at all to say that in fixing their prices they practically take the price of the chief competing foreign country and add to that the costs of freight and their own home tariff. They believe that they are justified in so doing. In individual cases, as, for example, that of the iron combinations in Germany, the combination has even found it wise at times, as did the distillers in the United States under the old Whiskey Pool, to assess themselves in order to pay export premiums to those of their numbers who were selling their surplus stock in the foreign market at a loss.

Beyond much question, in two or three of the European countries at least, the desire to secure somewhat greater power in contests with the labor unions exerted a noticeable influence toward forming the combinations. Nevertheless, speaking generally, the combinations have seemed to be ready to recognize trade unions and to deal with them on reasonable terms. In the case of the coal syndicate of Germany, the manager has said that in his judgment the leaders of the union believe that the combination has been to their advantage; that it has been so managed as to give the men steady employment at, on the whole, steadily increasing wages; and that it is likely in the future to prevent industrial crises which will lead to more unfavorable conditions for them. They, therefore, are, on the whole, inclined to favor the syndicate. In the case of the Bradford

Dyers in England, the workingmen and employers have a joint bureau for the settlement of disputes which may arise, with a fund on both sides to pay damages in case of dispute, and the two classes seem to be working together with mutual respect, and, on the whole, in harmony.

It has already been noted that the E. J. Smith combinations were founded upon an alliance between the workingmen and the employers which seems to have failed because they tried on the whole to exploit the consumer too far. Generally speaking, throughout Europe, so far as one can gather, there seems to be little hostility on the part of the laborers toward the combinations, and so far, indeed, as one can see, there is not in Europe the same degree of hostility on the part of the public toward the concentration of capital that exists in the United States.

It is true that the people in England complain at times of the number of members of Parliament who hold directorships in corporations, but they evidently consider this rather a hint toward political corruption than an attack upon combinations as such; and they do not have any especial fear of the power of monopoly.

In France some of the leaders of the Radicals earlier seemed to believe that the Government ought to take certain active measures toward investigating the question of combination with the possible thought of protecting the people; but here again those of socialistic tendencies are rather inclined to welcome the drift toward combination as a first step toward State socialism, and do not apparently have any fear of losing personal liberty through such influence. The strength of the Socialistic

party, at times even dominant, does not alter this general conclusion.

Similar are the conditions in Austria and Germany. In Austria there has apparently been a somewhat greater feeling of dread and of hostility toward the combinations than in any other European country. It is possible that here the movement may have been almost as active at times as in the United States. The opponents, however, have found it much more difficult to bring about legislation than in the United States, so that comparatively little has been done, and whatever agitation there may have been has been limited largely to editorials and speeches without any very effective results, except somewhat more rigid court decisions and the refusal to favor the combinations as in Germany.

In Germany the high price of coal at times during the last few years has, by many, been ascribed to the coal syndicate, and there has been much bitter complaint. On the other hand, however, those who have looked most closely into the matter—chambers of commerce, members of the government, and others—seem to have reached the conclusion that the increased price of coal at such times has been due rather to the extraordinary demand. Moreover, they note that the syndicate has at times opened new mines, and has increased its output to a greater extent than have the independent coal producers. On the whole, they are rather inclined to give the syndicate the credit of checking an abnormal tendency toward overproduction and speculation, with the danger of a consequent crisis, than to blame it for the course that it has followed.

Questions in the House of Representatives of Prussia and in the Imperial Reichstag have called from the Minister of Commerce words of defence and even of commendation for the syndicate.

With the exception of the coal syndicate, there seems to have been relatively little complaint made in Germany against the combinations.

This, of course, does not overlook the political influence of the labor organizations or the intent of the Socialist parties to assume control of capital through the State if that can be brought about. We must not forget, however, that in Germany, especially, the Socialist movement is not only economic but also largely political and that it is in many places merely a democratic movement, not all the leaders of which believe in the economic doctrines of Marx or the other Socialistic writers.

So far as actual or contemplated legislation is concerned, a little more may perhaps be said. In England, the amendments of the year 1900 to the stock corporation law have been in the direction of enforced publicity to a much greater degree. The earnings of promoters must be laid bare; and the regular profits or losses of the business, if the law is enforced with a reasonable degree of care, may certainly be known to the stockholders and to the general public. Legislation against combinations as such has not been made, but under the old common law monopolies and contracts in restraint of trade are, of course, forbidden or declared invalid. Nevertheless, the English courts have taken a position somewhat different from that followed by the courts of the United States. They seem rather to be of the

opinion that an agreement for the protection of one's own business, even though it may seriously injure competitors, is not to be looked upon as a combination in unreasonable restraint of trade, but rather as a justifiable measure of protection and one that should be considered valid. Unfair methods of competition, especially if they involve deception or fraud, are invalid under the Common Law.

In France, the provision of the French Penal Code, which forbids coalitions to raise prices, especially if fraudulent representations are used, has, beyond doubt, had a very deterrent effect toward open agreements on prices. Combinations have either taken the form of single corporations, or, like the Comptoir Métallurgique de Longwy, have organized a selling bureau as an independent establishment which buys and sells the products of the different members, or else, like the sugar combination, they take the form of an agreement regarding output and allow the prices to be regulated thereby without any formal contract on that subject being made. The drift toward combination in France is unmistakable, but it is very evident that this law has checked the open movement, and has also affected to a considerable degree the form which combinations assume.

In Germany, the courts have upheld, in one or two very striking decisions, the principle that agreements to prevent ruinous competition, and to maintain prices so that there shall be a reasonable return upon capital, are to be considered valid, and that penalties in such agreements in the nature of fines upon those who violate them may be enforced by law. The court in one de-

cision says: "When in a branch of industry the prices of the product fall too low, and the successful conduct of the industry is endangered or made impossible, the crisis setting in as the result of such a state of affairs is detrimental not only to individuals, but also to society as a whole, and it is therefore in the interests of the community that improperly low prices should not exist in a certain branch of industry for a long time. Therefore, it cannot be simply and generally considered as contrary to the interests of the community when *entrepreneurs* interested in a certain branch of industry unite with the object of preventing or moderating the mutual underselling, and as a result of the latter, the fall of the prices of their products. On the contrary, when prices are for a long time actually so low that financial ruin threatens the *entrepreneurs*, their combination appears to be not merely a legitimate means of self-preservation, but also a measure serving the interests of the community."

As has been said before, the German Government has openly defended the Coal Syndicate. Laws have been passed favoring the Potash Syndicate. So long as the public interest is not harmed by unfair practices or fraud, combination is not forbidden but is rather encouraged in many fields. A matter of special interest is the government bill introduced shortly before the outbreak of the war providing for a company of which the Government should have the controlling share, to control the wholesale trade in petroleum. This was clearly intended as an attack upon the Standard Oil Co., which, through its German subsidiaries, had secured largely the control of the German market. It was

felt to be contrary to public policy for a foreign company to control the market of so important a necessity.

In Austria, as has been intimated, the feeling against combinations has been considerably stronger. In 1897 the combinations among brewers, sugar refiners, and others seemed to the Government to threaten somewhat the interests of the treasury, inasmuch as if prices should be increased and, in consequence, the consumption should fall off, the tax levied upon those products would be materially lessened. With this thought in mind, the Finance Department proposed a bill placing these combinations whose goods were subject to the consumption tax under the somewhat rigid supervision of the Government, and providing that in case unreasonable measures were taken, the Government might forbid a contract or might give the fullest degree of publicity to all of the business of the combination. Owing in part to the political condition of Austria, in part also, perhaps, to the fact that the law was not more general in its application, nothing further has come of this. About the same time the Department of Trade and Industry appointed a special committee to consider the subject of the regulation of the combinations. This committee, after careful discussion of the whole question, handed in its report to the Section for Industry, Manufactures and Trade, and made the following recommendations:

"(1) That the combinations be recognized as legal organizations, and be put in consequence into legal form.

"(2) That every combination be obliged to record

its founding with a combination bureau or court, which shall be given certain judicial powers.

"(3) This combination court should have also the powers of a court of the first instance to settle primarily all controversies at private law arising in the course of the business of the combination.

"(4) For the checking of any tendency toward monopolistic prices on the part of the combination through its limitation of free competition, measures in the direction of the modification of import duties, and of freight rates on the State railroads, should be taken, as well as measures looking toward the furtherance of unions to oppose the combinations. (Presumably organizations among dealers and others.)

"(5) For the purpose of deliberating and of deciding regarding the measures to be taken by the administration, there should be created a Monopoly and Combination Council, which should be a consultative organ of the Ministry of Trade and Commerce.

"(6) Finally, the government was formally requested on the basis of this report to prepare a bill for a law on combinations to be laid before the Committee on Combinations for consideration."

This seemed at the time to be the most advanced step taken in any European country regarding restrictive legislation. It seemed not at all improbable that, as the result of this careful study on the part of the Government, some legislative measures might be passed. It should be noted that the result of this study—and one may say that similar opinions seem to be prevalent also elsewhere in Europe—was that the combinations ought not to be set aside, but to be recognized as normal institutions in modern industry, and to be restricted only by certain measures on the part of the Govern-

ment, which would prevent abuse of the power which they undoubtedly possess.

The recommendations, however, were not enacted into law, and the only laws against the combinations are those of the civil law and some special provisions of earlier laws of 1852 and 1870. Under these laws agreements of manufacturers for the purpose of raising the price of a commodity to the disadvantage of the public are unlawful. The courts have in several cases upheld the law and declared agreements invalid even though prices had not in fact been advanced, the intent as it appeared from the agreement being sufficient. Austria thus appears to come nearer the spirit of the Sherman law than either Great Britain or Germany.

Both Austria and Germany are rigid in the enforcement of laws against unfair competition, especially if the element of fraud appears.

The laws given in Appendix G show that European combinations, speaking generally, are not looked at askance in any of their countries to so great a degree as in many of our states. European countries, especially Germany, are inclined to welcome their advantages while protecting the public against unfair practices. The rule of reason applies in all countries.

War conditions in Europe after 1914 profoundly influenced all industrial conditions. The governments of all the warring powers at once passed laws affecting credits. In most instances they took complete control of the railways; and soon all industrial plants affecting munitions or war supplies or that needed control for war purposes were put under the supervision of government. Commissions were appointed to purchase and

distribute foods, to control factories, to direct work in whatever way seemed wisest, either directly or under their former management.

In Germany it has been the opinion of some observers that their Kartell organization has been advantageous while it has been deemed necessary to legislate against abuses.

On August 4, 1914, a law was passed punishing with imprisonment and fine those who sold goods at a price beyond a maximum price fixed. Under the corporation laws of Germany, agreements to maintain prices are legal and enforceable by courts unless they are considered directly contrary to public policy. In case, however, the Kartell agreements come in conflict with the new law fixing a new price, the latter takes precedence and a member of the Kartell could not be punished for refusing to abide by the price agreed upon when that conflicted with the war law.*

At the outbreak of the war the thorough organization of German industries in many lines under their Kartell agreements proved of great advantage in adjusting the industry to the new conditions created by the war. In many cases, for example, the great disadvantages coming from the moratorium were much lessened by the fact that these great monopolistic organizations were able without serious injury to extend the credit of their customers as it would not have been possible for smaller sellers to do.

Moreover, in many instances the best organized Kartells with their centralized selling syndicates had for several years attempted within broad lines to adjust

*Kartell Rundschau, 1915, page 453ff.

the supply to the demand. This had already proved in many cases of decided advantage in tiding over the evils of threatening crises.

At the outbreak of the war, therefore, they found themselves in a condition without serious difficulty still further to shorten the production or on the other hand, in case of industries stimulated by war conditions, promptly to take measures to increase the output.

During the war the Kartells have been able to carry out a regular policy of steadily increasing prices while the unorganized industries have in many cases been subjected to any irregular, often extraordinary, contradictory price policy sometimes dictated by a few important firms.

There will doubtless come a time after the war, Mr. Derblich thinks, and he believes it is very desirable that the time be not too long delayed but that it be prepared for as soon as possible, when both the State and the consumer will prefer to deal with firmly organized combinations rather than to treat with industries that exist without statistics, without any price regulations, in a word, without order and without representation.*

Many believe that the rigid government control during the war will inevitably lead to a great movement toward Socialism. Inasmuch, however, as the government management in war time has been carried on with little regard to expense, and as many will feel unwilling in time of peace to submit to government dictation readily accepted in time of war, it is quite possible that a reaction may be felt leading to the opposite result.

*J. Derblich, Article in the *Kartell Rundschau*, 1915, on the Austro-Hungarian Combinations and the War.

CHAPTER XIII

STATE TRUST LEGISLATION IN THE UNITED STATES

FREEDOM has been the American watchword from the founding of the first colonies. Applied to business, it led to the protests against arbitrary royal interferences with trade common to the declarations of the Revolutionary period. It led also to solemn constitutional enactments in the earliest State Constitutions against "perpetuities and monopolies" which had been feared and fought by the English forefathers since the days of dire oppression by the many monopolies granted by Queen Elizabeth. Maryland wrote into the Bill of Rights division of her Constitution in 1776, as Section XXXIX, "that monopolies are odious, contrary to the spirit of free government and the principles of commerce, and ought not to be suffered."* Substantially the same section is found in the earliest Constitutions of North Carolina, Florida, Tennessee, and Texas.

This hereditary anti-monopoly attitude so solemnly recorded in these early documents has been firmly maintained by the American mind generally all through the Republic's history. The pages of Congressional and Assembly journals are filled with anti-monopoly eloquence. With reference to the public lands, to the

*F. N. Thorpe "American Charters, Constitutions, and Organic Laws," Vol. 3, pp. 1690.

National Bank, to the issue of money, to the control of railways, the anti-monopoly spirit was invoked over and again.

Imbued, then, with the certitude that came from the consistent generations of popular opposition to monopolies and flushed with the success of the last great fight against the railway monopoly which had culminated in the Inter-State Commerce Law, it is not surprising that the American legislator was ready to hit any monopoly head which showed. The flood of anti-trust legislation, State and National, was the perfectly normal reaction of the American lawmaker as soon as he became aware of the monopolistic tendency of manufacturing concentration.

As was shown in Chapter I, industrial concentration had been steadily taking place, perhaps from the very first years of the Republic, but the earlier steps were short and halting. Average individual manufacturing plants had not become large until after 1870. It was not until the late seventies and early eighties that the combination movement began in the manufacturing world. By the end of the eighties individual plants, averaged for whole industries in the United States, had grown toward giant stature. For examples: the nearly 700 manufacturing plants in the iron and steel business had attained an average capital of above half a million dollars each, and the 900 plants manufacturing cotton goods averaged above a third of a million dollars capital each. The large plants in such industries were already listing their capitals in the millions. Thus the mere size of individual plants began to attract general public attention. It needed only that the new Trust

plan, uniting many large plants into the Standard Oil Trust in 1882, should be followed by like combinations in other lines to conjure again the anti-trust genii out of the American legislative bottle. The formations of the so-called "whiskey" and "sugar" Trusts in 1887 and the rumored plans for like combinations in other industries started the monopoly cry against manufacturing enterprises.

The party platforms of presidential years had variously and vigorously attacked banking, land, and railroad monopolies for two generations prior to 1890. The Democratic platform of 1848 pledged that party to the task of "continuing to resist all monopolies and exclusive legislation for the benefit of the few and at the expense of the many"; the Prohibition platform of 1872 declared "We are opposed to all discrimination in favor of capital and against labor as well as all monopoly and class legislation"; the Greenback platform of 1880 declared against "gigantic land, railroad, and money corporations and monopolies." There was even formed an anti-monopoly party, in 1884, which supported Benjamin Butler for President of the United States. It is notable, however, that this Anti-Monopoly Organization of the United States, as it styled itself, denounced the tariff as largely in the interest of monopoly and declared in favor of effective government regulation of "transportation, money, and the transmission of intelligence . . . now mercilessly controlled by giant monopolies," but this national organization, dedicating itself especially to a crusade against monopolies, failed even to mention Trusts or industrial combinations.

The first declarations against Trusts and industrial combinations came in 1888, the year after the formation of the whiskey and the sugar Trusts. The platforms of each of the seven parties in this presidential campaign declared against monopolies, and the platforms of the four leading parties had each a specific declaration against the new business organizations. Following are these four declarations of the leading parties of 1888:

*Republican Platform**:* "We declare our opposition to all combinations of capital, organized in Trusts or otherwise, to control arbitrarily the condition of trade among our citizens, and we recommend to Congress and the State legislatures, in their respective jurisdictions, such legislation as will prevent the execution of all schemes to oppress the people by undue rates for the transportation of their products to market."

Democratic Platform: "Judged by Democratic principles, the interests of the people are betrayed, when, by unnecessary taxation, Trusts and combinations are permitted to exist which, while unduly enriching the few that combine, rob the body of our citizens by depriving them of the benefits of natural competition."

Prohibition Platform: "Declare for prohibiting all combinations of capital to control and to increase the cost of products for popular consumption."

Union Labor Platform: "The paramount issues to be solved in the interests of humanity are the abolition of usury, monopoly, and Trusts and we denounce the Democratic and Republican parties for creating and perpetuating these monstrous evils."

It is evident, then, that by the middle of the year 1888 the general public had been thoroughly aroused

*For all references here to party platforms, see McKee's "National Conventions and Platforms."

against the new form of monopoly, and anti-trust legislation, state and national, was a swift consequence.

During 1888 bills against Trusts were introduced both in Congress and in many state legislatures. The state debates resulted earlier in laws, so that before the first Federal anti-trust statute was passed, July 2, 1890, no less than eight of the states had written anti-trust laws on their books. This began the first important wave of state anti-trust legislation.

Kansas, which even in 1887 had passed a law against monopolies in grain, led the procession, passing its general anti-trust act March 2, 1889. In order followed Maine, North Carolina, Tennessee, and Michigan, all in 1889, and South Dakota, Kentucky, and Mississippi in 1890, before the passage of the Federal Act. By the end of 1891 North Dakota, Oklahoma, Montana, Louisiana, Illinois, Minnesota, Missouri and New Mexico had all joined the trust-destroying procession. Wisconsin did not legislate against Trusts until 1893, but should be classed as a laggard in the first series.

As evidence that the campaign was meant to give permanent results and that the people resolved most positively to leave no legal weapon unused, a number of the states even added anti-trust amendments to their constitutions in these earliest days of attack. Idaho, Montana, North Dakota, and Washington all made such constitutional amendments in 1889, and by 1893 Kentucky and Mississippi had followed their example.

In summary, then, the first great wave of state anti-trust legislation resulted in amendments to the consti-

tutions of six states and resulted in statutes in seventeen states.

After the worst years in the terrible business depression, following the panic of 1893, activity in combinations of manufacturing plants began again with increasing vigor. By Mr. Moody's list, there were less than a hundred industrial combinations of consequence, prior to 1898, and more than three hundred by 1904. This renewed development toward manufacturing monopoly brought other states to the rescue. Alabama, Arkansas, Georgia, Indiana, Iowa, Nebraska, New York, Ohio, South Carolina, Texas, and Utah, all passed anti-trust statutes in the years 1895 to 1898 inclusive. This made a total number of twenty-nine states which legislated against Trusts in the first decade of the agitation against industrial monopolies.

This registration of the American attitude toward business combination has been endorsed and reinforced since 1900. Nine more states have legislated against Trusts, and many of the states have amended their statutes to make them more effective. Notably, after the presidential campaign of 1912, during which discriminating tactics by big business organizations against their rivals were condemned widely many states added sections to their anti-trust laws forbidding specifically "unfair competition and discrimination." In 1912 and 1913 no less than twelve states strengthened their Trust laws in this way. Most notable among these was New Jersey. This state deliberately remained an open state for Trust formation, during all of the first twenty-five years of general war on Trusts by most of her sister states and then, in 1913, under the

leadership of Governor Woodrow Wilson, she passed some of the most stringent of anti-trust statutes, those familiarly known as the "Seven Sisters."*

As an example of the more radical anti-trust legislation of the states, the Statute of Texas may be outlined.†

This statute first defines elaborately Trust, Monopoly, and Conspiracy in Restraint of Trade. As so defined, all Trusts, monopolies and conspiracies in restraint of trade are declared to be illegal and are prohibited. Foreign corporations violating the act are to be denied right to do business within the state. A domestic corporation violating the act is subject to fines ranging from $50 to $1,500 for each day of violation, and an individual person taking part in any violation of the act is subject to imprisonment for from two to ten years. All contracts and agreements in violation of provisions of the act are declared to be null and void and are not enforceable either in law or in equity. County and district attorneys may begin prosecutions under the act and must notify the attorney-general, who is thereupon bound to join in the prosecution and to do all in his power to enforce the act. Any witness having knowledge of a violation of the act may be compelled to testify, but is exempted from indictment or prosecution for any transaction, matter, or thing concerning which he shall give evidence. All actions brought under the act are given precedence, on motion of the prosecuting attorney, or the attorney-general, over all other business before the court save only criminal cases, the defendants of which are in jail.

*See Appendix E-2, p. 396, for full text of these New Jersey laws.

†This Statute is given in full in Appendix E-1 p. 384.

In summary of the whole state anti-trust legislation as to laws and constitutional amendments in force in the year 1914, these are the facts:

Of the forty-eight states:

Seven, Delaware, Nevada, New Hampshire, Oregon, Pennsylvania, Rhode Island, and West Virginia, had neither law nor constitutional provision against Trusts.

Three, Maryland, Virginia, and Washington, had constitutional provision, but no statutes against Trusts.

Twenty, Arizona, California, Connecticut, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Vermont, and Wisconsin, have statutes but no anti-trust constitutional provision. Six of these states have constitutional provisions relating only to railway consolidations or to railway and telegraph company consolidations.

The remaining eighteen states have both constitutional provisions and statutes against Trusts.

On the whole, it is a quarter-century record of consistent legislative battling against Trusts, with a growing determination amongst the states that Trusts shall be destroyed. The acts have been steadily strengthened and more and more states have legislated as the years have passed. If the state legislation be taken as the indicator of the American attitude toward Trusts, then it must be said that the overwhelming majority sentiment of the people is against the existence of these large industrial combinations.

Over against this majority stands the small number of states, such as New Jersey, Delaware, and West Virginia, which have not legislated against this new form of business organization. Until her defection

from this minority, in 1913, New Jersey was the most conspicuous of these Trust tolerating states.

New Jersey had a long record of open-mindedness in dealing with corporations generally. Her first general corporations act was passed in 1846, and this declared that the business to be done by such corporations must be done within the state. In 1865 this limitation was removed. In 1875 New Jersey amended its constitution so that it forbade the grant of special charters and directed the legislature to pass general laws under which alone corporations might be organized. The liberal act of 1873 did not require annual public statements of the amount of paid-in capital stock and of the existing debts and assets of corporations. Many states required such statements. New Jersey legislators deliberately omitted these requirements because such statements might react disastrously against the corporations. The position was taken that corporations should be treated as individuals were treated. Corporations were dealt with on the theory that they were legitimate forms of business enterprise and the regulations written in the Corporation Act were meant primarily to protect the persons interested in the company.

The act of 1875 set no limit to the amount of capital stock. It provided that directors might hold their annual meetings, have offices and keep all books, except stock and transfer books, outside the state. They were, however, to maintain a principal office in New Jersey, and all books might be ordered brought within the state by duly-empowered state officers. All meetings of stockholders and elections of officers were to be held within the state.

In 1883 and 1884 this general corporations act was amended by the addition of provisions for the payment of taxes for incorporation once and for all and for the payment of annual franchise taxes. The rates set in these acts are among the lowest set in any states, and have not been changed. The organization tax is 20 cents for each $1,000 of capital stock, but never less than $25. The annual franchise tax is 1-10 of one per cent. of the par value of issued capital stock up to $3,000,000, 1-20 of one per cent. from $3,000,000 to $5,000,000, and $5 for every $100,000 or part thereof in excess of $5,000,000. Nothing is left to the discretion of the tax gatherer since the tax is determined by the amount of the outstanding capital stock. It was deliberately declared that no chance would be left to officials to blackmail the great corporations by threatening to overcharge them.

In 1888 the New Jersey legislature made provision that corporations might hold and dispose of the stock of other companies, and in 1893 some doubtful passages in this enactment were cleared by express enactment that it should be lawful for any corporation in New Jersey "to purchase, hold, and sell stock and bonds of any other corporation in the same manner that an individual could."

In 1892 the act relating to conspiracy in New Jersey was amended to omit all mention of injuries to trade and commerce.

The acts of 1897, 1898, and 1899 further protected stockholders and corporations and facilitated combinations.

All through this history the policy of the state of

New Jersey had been clearly one of treating corporations just as it did individuals, on the assumption that it was desirable to aid the development of business in the state. This policy deliberately encouraged the growth of large companies and combinations.

It is worthy of note that the whole corporation law of New Jersey, favorable as it has been to the formation of Trusts, was worked out completely by 1888. It was not a law, hungrily or obsequiously passed by a state in intent to take advantage when other states were driving out Trusts. The whole free fabric of New Jersey corporation law was complete before a single anti-trust statute was passed by any state in the Union. New Jersey simply "stood pat" on that law after the fever of anti-trust legislation had attacked most of the states. Its law was different and it believed its law to be wise and right. The event seems to prove again the social helpfulness of our Federal system of government. While most of the states raged against Trusts and drove them out, New Jersey and a few others allowed open opportunity for the organization of these great industrial combinations. The result has been that twenty-five years of unbroken concentration of business capital has continued with effects which seem now to be changing the public mind. It is not at all impossible that another decade will see the majority opinion in America converted to the idea that Trusts should be not only tolerated, but encouraged, provided only that they conduct their business with fair dealings respecting their competitors, their investors, their employees, and those who buy their goods. If such complete reversal of the Trust smashing program of majority America to date should

occur, it will be proven that New Jersey served the whole business of the nation well in standing staunchly true to her conviction that legislation should aim to help and not to hinder business development under the corporate form.

When the trust baiting by the states was well under way, such combinations as were driven into exile and such as desired to form anew came to the liberal states, and mainly to New Jersey. Because of her stable policy of a square deal for corporations, the fair range of powers she allowed them, the low and certain taxation and the ample protection of the rights of stockholders, New Jersey, after 1898, became the home of the Trusts.

The record of corporation development in New Jersey as shown by the corporation tax returns from 1885 on is significant. In the year 1885, the first full year after the introduction of the present taxation features into the New Jersey law, the state's receipts from miscellaneous corporations for both annual and incorporation taxes was $151,782.23. There were only twenty-three corporations which paid $1,000 or more taxes each in that year and only one, the Mutual Benefit Insurance Company, which paid above $5,000 annual tax. Of the twenty-two corporations paying between $1,000 and $5,000, all were transportation, public utility, or insurance corporations except two, the Allen Paper Car Wheel Company (tax $1,250) and the Union Phosphate Mining and Land Company (tax $1,000). In 1913* New Jersey received in current and back taxes from miscellaneous corporations $2,650,694.23, or more than seventeen times the

*1913 is the last year in which the report of the Treasurer of New Jersey gives in detail the receipts from corporations.

aggregate tax from such corporations received twenty-eight years before. In this year of 1913 no less than 432 corporations paid New Jersey $1,000 or more each, in taxes, and sixty-three of these paid each more than $5,000. Contrasting sharply with conditions in 1885, it is notable that only ten of these sixty-three larger corporations were transportation, public utility, or insurance corporations, while fifty-three of them were industrial corporations. Ranging from the Eastman Kodak Company (tax $5,034.42) and the Bethlehem Steel Company (tax $5,250), among the lowest tax payers of these multi-million dollar corporations, through such tax payers as the United States Rubber Company (tax $8,221.97), the American Sugar Refining Company (tax $8,176.71), and the International Harvester Company (tax $10,750), up to the United States Steel Corporation (tax $47,179.18) this group of fifty-three industrial corporations, now organized under New Jersey law, includes nearly all of the notable combinations in the United States.

In February, 1917, a New Jersey legislative commission reported in favor of repealing all of the "Seven Sisters" anti-trust laws except the one containing the anti-discriminatory legislation (ch. 15). The full text of the Acts appeared March 28, 1917, after the New Jersey legislature had considered the report of this commission, and is given in the Appendix, pp. 404 to 407. This 1917 legislation somewhat restores the old New Jersey attitude of liberality toward industrial combinations.

CHAPTER XIV

FEDERAL TRUST LEGISLATION IN THE UNITED STATES

THE general industrial conditions which stimulated an American reaction in anti-trust legislation, a reaction which simply gave a new expression of the traditional anti-monopoly creed, are outlined at the beginning of the preceding chapter. The Federal law-making body moved more deliberately than some of the state legislatures and it was not until July 2, 1890, that the first Federal anti-trust act finally became law.

A few bills against Trusts had been introduced in both the House and the Senate early in 1888, before the presidential nominating conventions had issued the anti-trust planks* of their platforms. In the summer and fall following these platform declarations, many anti-trust bills were introduced in both houses of Congress. Among these, Senator John Sherman introduced, August 14th, his first anti-trust bill. This bill, wholly amended, was reported back to the Senate from the Committee on Finance in January, 1889, and was debated in January and February.

President Harrison, in his first message to Congress, December 3, 1889, reënforcing the platform mandate of his party in 1888, said: "Earnest attention should be given by Congress to a consideration of the question

*See p. 244 for these planks.

how far the restraint of those combinations of capital commonly called 'Trusts' is a matter of federal jurisdiction. When organized, as they often are, to crush out all healthy competition and to monopolize the production or sale of one article of commerce and general necessity, they are dangerous conspiracies against the public good and should be made the subject of prohibitory and even penal legislation."

Senator Sherman, alert to urge action in accord with this presidential advice, again introduced his anti-trust bill on December 4, 1889, this time as Senate Bill No. 1, by title "A bill to declare unlawful Trusts and combinations in restraint of trade and production." Amendments followed amendments as a result of lengthy debates on this measure during the next four months. On March 27, 1890, the bill, with its proposed amendments, was referred to the Senate Judiciary Committee. This committee, on April 22d, reported back the amended bill in the very form in which it was finally adopted. The title of the bill was changed to read "A bill to protect trade and commerce against unlawful restraints and monopolies." This bill passed the Senate, with but one dissenting vote, April 8, 1890, and on May 1st, in amended form, it passed the House. In accord with the Conference Committee's recommendation, the House, after several days of further debate, receded from its amendments, and passed the bill as it had come from the Senate. July 2, 1890, after more than two years of congressional consideration of the Trust question, this first Federal anti-trust statute became law of the land. It has since been known familiarly as the Sherman Anti-Trust Act, although in its final form

it had been drawn by others and it had been wholly altered from the original bill as proposed by the senator from Ohio.

Senator Sherman took a leading part throughout the two years of senatorial debate on this Trust subject. A few excerpts from one of his addresses, as the long debate drew to a close, will show the purposes actuating Congress, its full sense of the giant power it was trying to curb, its recognition of the limits to Federal action, and its full realization of the importance of the tariff and the transportation factors in the growth of the American Trusts. In the course of an able argument for anti-trust legislation Senator Sherman said: "Each state can and does prevent and control combinations within the limit of the state. This we do not propose to interfere with. . . . Unlawful combinations, unlawful at common law, now extend to all the states and interfere with our foreign and domestic commerce and with importation and sale of goods subject to duty under the laws of the United States, against which only the general government can secure relief. They not only affect our commerce with foreign nations, but trade and transportation among the several states. The purpose of this bill is to enable the courts of the United States to apply the same remedies against combinations which injuriously affect the interests of the United States, that have been applied in the several states to protect local interests. . . . It is to arm the Federal courts within the limits of their constitutional power, that they may coöperate with the state courts in checking, curbing, and controlling the most dangerous combinations that now threaten the business

property and trade of the people of the United States" . . . "But associated enterprise and capital are not satisfied with partnerships and corporations competing with each other and have invented a new form of combination commonly called 'Trusts,' that seeks to avoid competition by combining the controlling corporations, partnerships, and individuals engaged in the same business and placing the power and property of the combination under the government of a few individuals, and often under the control of a single man called a "trustee," a "chairman" or a "president."

"The sole object of such a combination is to make competition impossible. . . . Such a combination is far more dangerous than any heretofore invented, and when it embraces the great body of all the corporations engaged in a particular industry in all the states of the Union it tends to advance the price to the consumer of any article produced, it is a substantial monopoly injurious to the public and by the rule of both the common and the civil law, is null and void and the just subject of restraint by the courts, of forfeiture of corporate rights and privileges and in some cases should be denounced as a crime, and the individuals engaged in it should be punished as criminals. It is this kind of a combination we have to deal with now . . . we should not submit to an autocrat of trade, with power to prevent competition and to fix the price of any commodity. If the combination is confined to a state, the state should apply the remedy; if it is interstate and controls any production in many states, Congress must apply the remedy. If the combination is aided by our tariff laws, they should be promptly changed, and if

necessary equal competition with the world should be invited in the monopolized article. If the combination affects interstate transportation or is aided in any way by a transportation company, it falls clearly within the power of Congress, and the remedy should be aimed at the corporations embraced in it and should be swift and sure."*

As this address of Senator Sherman evidences, the issues involved in the Trust movement were set forth as directly, in the congressional debates of 1888 to 1890, as they have been set forth at any time since. Few and young as were the Trusts, their great import was realized and the statute which summarized the conviction of Congress in 1890, has stood, in its main propositions, for twenty-six years, as the well-nigh unchallenged expression of the American will. Later legislation to date seeks only to amplify its reach, to strengthen its means of enforcement, and to reënforce its central proposition that Trusts are bad and should be prevented or abolished. The occasional challenging voices have seemed to be crying in a wilderness.

Before outlining the content of this leading Federal anti-trust law, mention should be made of one amendment, proposed during the debates. This amendment is of interest both because of its later citation before the Federal courts and because it was the shadow cast before section six of the Clayton Act.

This amendment proposed to exempt from the operation of the law agreements or combinations made by laboring men or by persons engaged in agriculture or horticulture. Organized labor had largely influenced

*See 21, Congressional Record, pp. 2456 and 2457.

congressional action during the 'eighties in passing the contract labor sections of the immigration laws, and in establishing the national Bureau of Labor and the Inter-State Commerce Commission. Friends of the waxing American Federation of Labor and of the waning Knights of Labor foresaw the possibility that this great Federal legal weapon being forged for use against combined capital might readily be turned against combined labor. Therefore came this proposal specifically to safeguard organized labor against such a fate. The amendment, after debate, was lost and its failure to pass gave grounds for later court decisions that the statute was applicable to monopolies and trade restraints due to combinations of labor as well as to combinations of capital. Twenty-four years after the defeat of this amendment the friends and representatives of organized labor succeeded in getting a labor exemption clause written into the Clayton Act.

Turning now to consideration of the content of the Sherman Anti-Trust Act, it seems needful here merely to outline that content since the full text of the law is given as Appendix F-1:

The law contains only eight brief sections. The first three of these define the offences and state the penalties. The law aims to prevent or to destroy any combinations in the United States operating beyond the limits of a single state or territory, which restrain or monopolize trade or which even attempt to monopolize it. Penalties are made severe and applicable to individuals as well as to corporations. The court may assess fines up to $5,000 or jail sentences up to one year or both. Truly, the anti-monopoly spirit was safely enthroned.

The next four sections of this law give jurisdiction to the circuit courts,* make it the duty of Federal district attorneys to prosecute violators of this law, empower the courts to summon witnesses and to make forfeit certain property of any combination being tried, and provide for recovery of liberal three-fold damages by any person who can prove damage done to him by an unlawful combination. The closing section defines person as used in the act so that it covers corporations and associations as well as individuals.

Brief, but direct and broad of application, this Federal law, had it succeeded in doing what its makers intended, would have notably checked the industrial advance of the United States of America during the past twenty-five years.

Between 1890 and 1903 many bills concerned with trusts were proposed in Congress, a score in the Senate and more than a hundred in the House, but none passed except the anti-trust sections attached to the Wilson Tariff Act of 1894. Those sections declare unlawful any combinations engaged in importation of goods into the United States whenever these combinations seek to restrain trade or competition or to increase prices of their imported goods or of wares made from these.†

Of the many other anti-trust bills, all of which failed to pass during this thirteen years, some aimed to overcome weaknesses of the Sherman Act shown by the Knight case; others proposed to remove tariff protec-

*Jurisdiction is now lodged in the District Courts since the abolition of the Circuit Courts. See Appendix F-7.

†The full text of these sections of the Wilson Act as retained in the Dingley Act and as slightly amended in the Act of February 12, 1913, is given as Appendix F-2.

tion from trust-made goods; all evidenced unabated Congressional zeal for Trust destruction.

It became apparent in the early attempts to administer the Sherman Law that there was need of a permanent Federal administrative agency with ample powers to secure information from the greater corporations and to give publicity to their modes of conducting business. Justice Harlan urged in 1893* the necessity for establishing "an administrative body representing the whole country, always watchful of the general interests and charged with the duty, not only of obtaining the required information, but of compelling, by all lawful methods, obedience to such rules." He further urged that such a body was needed both to secure information necessary as a basis for further intelligent legislation relative to great corporations and to enforce such laws as might be passed.

In 1902 the Industrial Commission made official recommendation, in its final report, that a permanent bureau should be created with the duties of registering all state corporations doing an interstate business, of getting from such corporations full reports needed for levying a franchise tax, of inspecting the business of such corporations to determine that they obey the law, and of making investigations to furnish Congress with information for future legislation.

Early in 1903 Attorney General Knox recommended to the Senate Committee on the Judiciary that "a commission should be created to aid in carrying out the provisions of the Act of July 2, 1890, and any further legislation relating to commerce."

*See Interstate Commerce Commission v. Brimson, 154 U. S. 474.

In accord with these various suggestions, Congress February 14, 1903, established the Department of Commerce and Labor and provided for a Bureau of Corporations* in this Department. The chief functions of this Bureau were those of investigation and publicity. It was generally felt that more light was needed on the interstate corporation before Congress should further legislate. The principal work of this Bureau of Corporations has been to investigate Trusts and combinations in restraint of trade. It has also advised the Department of Justice in cases involving enforcement of the anti-trust laws.

The Bureau, between 1905 and 1915, when it was absorbed by the new Federal Trade Commission, published twenty-nine special volumes giving detailed information concerning the Beef, Petroleum, Tobacco, Steel and Lumber industries, the Cotton Exchanges, Taxation of Corporations, and Water Transportation in the United States.

The other Trust laws, passed in 1903, provided for expediting Trust suits in which the United States was a complainant,† and for making immediately available for furthering prosecutions under the Inter-State Commerce and the anti-trust acts the sum of half a million dollars.‡ A proviso of this latter act granted immunity to persons testifying in suits under the Trust and commerce acts. In 1906 this immunity was limited to natural persons only.§

For a decade after 1903 attention was given to gather-

*See Appendix F-4. Act of February 14, 1903, section 6.
†See Appendix F-3. Act of February 11, 1903, amended by act of June 25, 1910.
‡See Appendix F-5. Act of February 25, 1903.
§See Appendix F-6. Act of June 30, 1906.

ing elaborate information concerning Trusts through the Bureau of Corporations and to active prosecution, under the attorney-general, of alleged violators of the Federal anti-trust laws. No additions to the national anti-trust laws were made during this decade except the slight modification of the immunity provision noted above and the single paragraph in the Panama Canal Act,* which forbids the use of the Canal by vessels belonging to violators of the anti-trust statutes.

The elaborate reports on various Trusts made by the Bureau of Corporations and the findings of fact in the many prosecutions of Trusts, notably in the Oil and Tobacco cases of 1911, emphasized the high value of knowing the facts, and focussed public attention upon questionable practices of great combinations. Thus the way was prepared for the most important additions to the Federal anti-trust laws which have been made since 1890, the Federal Trade Commission Act and the Clayton Act, both passed in the fall of 1914.

In 1908 the platform of the Democratic party reiterated its ancient slogan "a private monopoly is indefensible and intolerable" and called for criminal prosecution of "guilty Trust magnates" and for law "to make it impossible for a private monopoly to exist in the United States." Three special remedies were proposed by Democracy: (1) a law against interlocking directorates; (2) a federal license system requiring each corporation doing inter-state business to have a federal license before it should be permitted to control 25 per cent. of its kind of business in the United States, and forbidding it in any case to control above 50 per cent. of such busi-

*See Appendix F-8. Section 11 of Act of March 4, 1913.

ness; and (3) a law compelling all licensed corporations to sell to all purchasers in the United States on the same terms, making due allowance for cost of transportation.

The Republican party, in its 1908 platform, dismissed the Trust issue in three sentences, declaring the Sherman anti-trust law, passed and enforced by Republicans, to be "a wholesome instrument for good in the hands of a wise and a fearless administration," but admitting that amendments were needed to give the Federal Government greater control over inter-state corporations tending to monopoly.

The Republicans won the election and remained content with another four years of "fearless administration" using the same "wholesome instrument for good," unchanged by any amendments giving greater control over Trusts.

In 1912 the Democratic platform again declared private monopoly indefensible and intolerable, asked for added legislation to make such monopolies impossible in the United States, favored express declaration of the conditions under which corporations should be permitted to engage in inter-state trade, including "prevention of holding companies, of interlocking directorates, of stock watering, of discrimination in price and of control by any one corporation of so large a proportion of any industry as to make it a menace to competitive conditions." It charged the Republican administration with compromising with the Standard Oil and the Tobacco companies. This platform Trust plank closed with the following fervent declaration in favor of the most rigid return to the traditional American anti-monopoly doctrine: "We regret that the Sherman

anti-trust law has received a judicial construction depriving it of much of its efficacy and we favor the enactment of legislation which will restore to the statute the strength of which it has been deprived by such interpretation."

The Republican plank, after restating the 1908 ideas, declared for provisions that "no part of the field of business opportunity may be restricted by monopoly or combination."

The Progressive platform, alone of all party platforms since the Trust question became a theme for platform rhetoricals, declared for a distinction between good and bad trusts, with adequate administrative machinery to enforce fair dealing by the tolerated great combinations. It was a new campaign doctrine to declare: "We do not fear commercial power, but we insist that it shall be exercised openly, under publicity, supervision, and regulation of the most efficient sort, which will preserve its good while eradicating and preventing its evils."

The Democrats, restored to power in the election which followed, passed the Federal Trade Commission Act and the Clayton Act. The Trade Commission Act provided for the supervising and investigating machinery, need for which had prompted the establishment of the Bureau of Corporations in 1903 and declarations for which had been made both in 1908 and in 1912 by Republicans and Democrats alike and in 1912 also by Progressives. The Clayton Act enacted into law the Democratic demands of 1912 for abolishing certain questionable practices of combinations and for making private monopoly impossible in the United States. These two important acts are given in full in the Appendices.

A brief summary of the leading anti-trust provisions of the Federal Trade Commission Act follows:

THE FEDERAL TRADE COMMISSION ACT*

By Act of Congress approved September 26, 1914, a non-partisan Federal commission was created, which is directed to "prevent persons, partnerships, or corporations, excepting banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce." To carry out the provisions of the act, the Federal Trade Commission, composed of five members appointed by the President, is empowered to conduct hearings in any city of the United States. If unfair methods are shown, the Commission shall direct the offenders to desist therefrom, and may apply to the U. S. Circuit Court of Appeals for the enforcement of its orders. The Commission is also empowered to enforce compliance with certain sections of the Clayton Act; to conduct investigations into business practices and management; to investigate the enforcement of decrees under the Sherman Act; and to investigate and report to Congress on foreign trade combinations. Maximum penalties of imprisonment for six months, a fine of $1,000 or both, are provided for refusal to testify before the Commission, falsification of evidence, and failure to submit required reports.

The Federal Trade Commission, as established by this act of September, 1914, has not only the functions of investigation and publicity exercised from 1903 to 1914 by the Bureau of Corporations, but it has additional functions of investigation, publicity, and recom-

*See Appendix F-9. Act of September 26, 1914.

mendation, and further, it has powers of a quasi-judicial character. Among the new powers of investigation, publicity, and recommendation are notable: Authority to require corporations to make annual or special reports in such form as the Commission may prescribe; general power to investigate corporations; authority, under direction of the President or of either House of Congress to investigate and report concerning any alleged violations of the anti-trust acts by any corporation; authority to investigate trade conditions in other countries with reference to combinations or other conditions affecting foreign trade of the United States; authority to make recommendations to the attorney-general for readjustment of any corporation found to be violating the anti-trust acts; authority to investigate the manner in which any court decrees, restraining corporations from violating the anti-trust laws, are being carried out; and authority to make public such portions of the information obtained in its investigations as it shall deem expedient, except trade secrets and names of customers.

The quasi-judicial functions of the Commission may be thus summarized: It has authority to enforce the provisions of the Federal Trade Commission Act relative to unfair competition, and the provisions of the Clayton Act, notably those relative to price discrimination, tying contracts, holding companies, and interlocking directorates, as to all corporations which come under its jurisdiction.

There has thus been created and broadly empowered a Federal administrative agent to deal with great industrial corporations which do business beyond the

borders of a single state. Such an agent is indispensable if the difficult trust problem of the United States is to be solved scientifically. Men of vision, such men as Justice Harlan, began to point out the need for such an administrative body as soon as the Sherman Law began to be applied. The Bureau of Corporations was a forerunner, which demonstrated the high value of official expert determination of the facts about Trusts. The Federal Trade Commission is the fully developed, fact-finding, and administrative body, all too slowly evolved through the urgent necessities of the situation.

The Federal Trade Commission was organized in accord with the law on March 16, 1915. While it has been conducting an elaborate study of the entire petroleum industry and has, incidental to this study, made investigation of the gasolene situation to aid the Department of Justice in dealing with numerous complaints of discrimination, its activities during its first two years emphasize its powers of service to industry rather than its trust-detecting and trust-smashing powers. Absorbing the Bureau of Corporations, it fell heir to an investigation of the fertilizer industry already under way. This report was completed and printed August 16, 1916. The friendly attitude is indicated in the record that the Commission had held conferences with various fertilizer companies as a result of which these companies have voluntarily agreed to abandon their prevalent custom of operating many controlled companies as apparent independents. The friendly attitude appears, too, in the published suggestions of the Commission to retail merchants and to manufacturers, relative to accounting systems suitable

for adoption by such merchants and manufacturers. The Commission has found that unreliable knowledge of costs of production and of distribution cause a great deal of unfair competition. Instead of applying immediately pounds of investigation to the end of punishing, the Commission has chosen to issue ounces of prevention in the form of these helpful simple manuals which may induce merchants and manufacturers to give the subject of accurate costs the attention it deserves and, learning their true costs, to lessen predatory price-cutting responsible for so heavy a death rate in business enterprises.

The Commission is extending especial assistance toward the permanent expansion of American foreign trade. Its report of June 30, 1916, on trade and tariffs in six South American countries, is probably but an indication of large service it may render to American importers and exporters. The report aims not only to show the obstacles to be encountered in the trade conditions and in the customs laws and practices of Latin America, but also to indicate both to business men and to the governments of North and South America how these obstacles may be overcome. The two-volume "Report on Coöperation in American Export Trade," published at the close of 1916, is a detailed investigation of the "competitive conditions affecting Americans in international trade." The Commission reaches a convincing conclusion in this report that legislation should be enacted permitting the formation of combinations to carry on foreign trade. The summary of the Commission recommendations in this report gives high official sanction for abandoning the

hard-and-fast anti-combination attitude of American Federal legislation for the past quarter century: "By its investigation the Commission has established the fact that doubt as to the application of the anti-trust laws to export trade generally prevents concerted action by American business men in export trade, even among producers of non-competing goods. In view of this fact and of the conviction that coöperation should be encouraged in export trade among competitors as well as non-competitors, the Commission respectfully recommends the enactment of declaratory and permissive legislation to remove this doubt. This recommendation is made subject to the condition that the legislation shall be carefully safeguarded and shall make absolutely clear that the combinations for export business are subject to all the rigors of the Sherman Law if they are used to restrain trade in the United States."

"The commission does not believe that Congress intended by the anti-trust laws to prevent Americans from coöperating in export trade for the purpose of competing effectively with foreigners, where such cooperation does not restrain trade within the United States and where no attempt is made to hinder American competitors from securing their due share of the trade. It is not reasonable to suppose that Congress meant to obstruct the development of foreign commerce by forbidding the use in export trade of methods of organization which do not operate to the prejudice of the American public, are lawful in the countries where the trade is to be carried on, and are necessary if Americans are to meet competitors there on more nearly equal terms."

THE CLAYTON ANTI-TRUST ACT*

The Clayton Law which was approved October 15, 1914, is further entitled: "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes." The provisions of the law that apply to Trusts may be summarized as follows:

It shall be unlawful for any person to discriminate in price between different purchasers of commodities, except where such discrimination merely allows for differences in quality, in quantity sold, or in selling and transportation costs, or is made in good faith to meet competition (sec. 2).

No corporation shall acquire the whole or part of the stock or other share capital of any other corporation "where the effect of such acquisition may be to substantially lessen competition" between the two corporations, "or to restrain such commerce in any section or community," or tend to create a monopoly. This shall not prevent corporations from holding such stock simply for investment, its voting power not being used to lessen competition, or from forming legitimate subsidiary corporations (sec. 7).

After two years from the approval of this Act, no person shall at the same time be a director or employee of more than one bank or trust company which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000; and no person at the same time shall be a director in any two or more corporations engaged in commerce, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000 (sec. 8).

After two years from the approval of this Act, no common carrier shall deal in the securities or supplies,

*See Appendix F-10. Act of October 15, 1914.

or make any construction or maintenance contracts to the amount of more than $50,000 in any one year, with any other corporation, when the common carrier has as one of its officials, or its agent in the particular transaction, any person who is an officer or agent or has a substantial interest in the corporation with which the business is done—unless the contract is awarded through competitive bidding, under the rules of the Interstate Commerce Commission (sec. 10).

Any person who shall be injured in his business or property *by reason of anything forbidden in the anti-trust laws* may sue in a district court of the United States, and may recover threefold the damages sustained by him, and the cost of the suit (sec. 4).

A decree rendered against the defendant in a suit brought by the United States under the anti-trust laws shall be *prima facie* evidence in any suit brought by any other party against the defendant; and the statute of limitations shall not run against any private right of action under the anti-trust laws during the pendency of a Federal suit under these laws based in whole or in part upon any matter essential to the private suit (sec. 5).

Whenever a corporation violates any of the penal provisions of the anti-trust laws, such violation shall be deemed to be that of the individual directors, officers, or agents who have authorized or done the violating acts, under penalty of fine up to $5,000, and imprisonment up to one year, or both (sec. 14).

Any person shall be entitled to sue in a Federal court for injunctive relief against threatened immediate and irreparable loss or damage by a violation of the anti-trust laws (sec. 16).

No injunction shall be granted by Federal judges in any labor dispute, unless necessary to prevent irreparable injury to property; and no injunction shall prohibit any person from quitting work, or from peacefully

advising or persuading others to quit. No injunction shall forbid any person to cease to patronize or to employ any party to a labor dispute, or by peaceful and lawful means to recommend, advise, or persuade others so to do. No injunction shall forbid persons to assemble peaceably in a lawful manner, and for lawful purposes, or from doing anything which might lawfully be done in the absence of the dispute, by any party to the dispute (sec. 20).

In general as to anti-trust legislation, it is obvious that these two acts of 1914 write into law of the land the 1912 platform pledges of the Democratic party. The Clayton Law prohibits specifically new holding company operations, interlocking directorates and price discriminations, while the Federal Trade Commission Act declares unfair methods of competition to be unlawful. The whole tenor of both acts is toward preventing control of so large a proportion of an industry by any combination that it becomes a menace to competitive conditions. Clearly the anti-monopoly mind of the American people is here expressed in large capitals. The legislation, deliberately passed, after nearly a quarter of a century of discussion concerning the Sherman Act, and of interpretation and enforcement of that act, registers the fact that majority opinion in America at the present time not only is not desirous of yielding its anti-monopoly tradition, but that it believes very definitely, in terms of the Democratic platforms of 1912, that legislation should be passed "which will restore to the Statute (the Sherman Law) the strength of which it has been deprived" (by judicial construction).

The key section which emphasizes the anti-monopoly spirit is Section 7 of the Clayton Act: "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or part of the stock or other share capital of another corporation also engaged in commerce where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce." This excerpt from that section records the extreme legislation against corporate combination. No horizontal combination, big or little, is possible under this act for it is inconceivable that one of two competitors should acquire the other's stock and yet not disturb the competition between them. Strict construction of this Section 7 would prevent any further corporate combinations in the United States. It was an act of grace that closed the section with the saving clause that "nothing contained in this section shall be held to affect or impair any right heretofore legally acquired." This seems to say that such Trusts as have before September-October, 1914, succeeded in getting past the previous anti-trust barriers are to be tolerated as they are, but this act creates a stone wall barrier to stop them from any further combination growth and to prevent altogether the advance of any new combinations. It will be interesting to observe once more the penetrability of an impenetrable legislative wall if the evolutionary strength of the combination movement in the United States is not yet spent.

Sections 6 and 20 of the Clayton Act make of it an

American Magna Charta for organized labor in the thought of labor leaders. Section 6 exempts labor, agricultural, and horticultural organizations from being "held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." Section 20 apparently sets limits to the use of the injunction against labor organizations. The frequent salting of the phraseology of the latter section with such ambiguous terms as "peaceful," "peaceably," "peacefully," "lawfully," "lawful means," "lawful manner" and "lawful purposes" raises question in the mind of the lay reader whether the limits set are not far more apparent than real. None the less organized labor sees its will written into an anti-trust statute of 1914 in clear contrast to the defeat of the proposed amendment similar to Section 6 of the Clayton Act during the original debates on the Sherman Act.

A sound program for national treatment of Trusts can be outlined from the viewpoint of economics. In many industrial lines cost-cheapening is an outcome of combination. No one can say what is the perfect cost-cheapening size for the productive unit in any given industry.

Conditions should be made right for careful experiment to learn this size, for so far speculative promotions and predatory modes of competition have all too often fogged the experiment. Law and administration, rightly to condition this experiment, must be national in scope, for the producing units are coming to be nation-wide, even world-wide, industrial combinations.

There must be maintained a fair and open field for

industrial competition to do its full work. That the field be fair, cunning promotions, local price-cutting, personal and local rebates, factors' agreements, and the like must cease. That the field be open, anti-pooling clauses for railways and anti-monopoly clauses for industrials must go, too. *In the fair field, no competitor's growth must be checked even though complete monopoly come.*

In the national field kept thus, both fair and open, full monopoly may not win out in many lines of industry. It may not win out in any line. If full monopoly does win out in any line, that will be proof that it is the sought-for cost-cheapening unit. Whenever and in whatever industry this may be proved, the public mind then and there may see that competition is dead and should be buried to the music of suitable praise for its past service to man. To fight monopoly, then, to try to quicken dead competition, then, would mean that democracy was listing itself with the weavers who vainly strove against the new loom, the stage drivers who threw themselves before the locomotive, and all others who have futilely sought to stop the march of cost-cheapeners. Honest cost-cheapeners come to stay. This is a lesson of economic history which democracy needs to know and to apply.

"Monopoly" and "monopolist" must not be allowed to frighten great, maturing democracy. Rather in the fair field, kept deliberately open, let the honest cost-cheapening monopoly be welcomed, if it come. It will be gigantic—nation wide in its power *and in its service*. Its public character will be beyond dispute. Control by the nation, therefore, will be as natural as

it will be necessary. Shall this be effective Federal control or outright government ownership? Evolution admits little doubt here—effective control has first place.

Such social control in addition to insuring fair treatment of all competitors as the monopoly is developing, and fair opportunity always for new competitors to enter the field against the once attained monopoly, must go further. It must extend to workmen in these quasi-public businesses living chances now offered in full public enterprises—reasonable hours, living wages, safe and healthful factory conditions, accident compensations, and service pensions. It must protect buyers of the monopoly's stocks and bonds against gambling issues. It must safeguard buyers of the monopoly's goods against the natural bent of monopoly to set those prices which will yield it greatest pure profit.

Price control must be at once friendly to the business and just to the public. Friendly—in that it allows such gain as will spur the industrial captains to do their best; just to all—in that it sets a fair maximum margin above actual cost.

In summary, this program is that the nation shall keep a fair, open industrial field everywhere. No more than this is needed, unless, through fair contest, monopoly shall come. If and when it comes, the fact must be accepted. Knowing neither costly distrust nor foolish fear, the master nation may then write and enforce that law of control which will make huge monopoly its giant servant.

Our national Trust legislation to date has attempted to secure the fair field by law against unfair competitive methods. It has created a commission with wide powers

of investigation, publicity, and control—a commission whose powers could readily be widened to cover the whole needful field of social industrial control if national monopoly came and was acknowledged and accepted.

The serious error in the national legislation, to date, if the economic program outlined above be sound, is due to traditional blind fear of monopoly. This has led to attempts to legislate out of existence and to prevent centralizations of industrial control where they even tend to monopoly or to restrain competition. The *fair industrial field* America's Trust legislation has sought to secure from the days of the Sherman Act and has fairly effectively insured through the acts of 1914; but the *open industrial field* is thus far bluntly opposed by this same series of national Trust laws. They are properly called *anti-trust* laws since the very essence of them is hostility to any growth or combination in the industrial world which even suggests possible monopoly. This persistent monopoly fear and attempt at monopoly prevention or destruction is the source of much of the difficulty in dealing with great industry. The normal development of much of manufacturing industry seems to be unmistakably in the direction of giant industry, if not of complete monopoly. To legislate in opposition to a normal tendency of industry is sure to make that legislation difficult, if not impossible, to enforce. If the nation would take the further step of creating an *open field* for full industrial development, as it has made ready to secure a *fair field*, if it would do this both as to railways and as to industrial Trusts, the whole great matters of control of the nation's mightier productive energies would be greatly simplified. The

Federal Trade Commission is seeking to help rather than to hinder, threaten, or punish business development, but it is hampered by the anti-monopoly mandates of the law. If these were elided from the law then lawmakers, courts, and administrative commissions at present engaged in the uninspiring and costly business of trying to thwart or defeat great industrial growth would all be thereby set free to do the stimulating, progressive work of guiding and directing the nation's great energies to their utmost achievements.

CHAPTER XV

TRUSTS AND THE FEDERAL COURTS

FROM October 13, 1890, when suit against the members of the Nashville Coal Exchange was begun in the Circuit Court at Nashville, Tennessee, down to October 27, 1916, when indictment was returned in the Oregon District Court, charging certain officers and agents of nine cement companies with engaging in a combination to restrain and to monopolize trade and commerce in cement on the Pacific coast, one hundred and seventy-four suits have been filed in the Federal courts of the United States alleging violation of the anti-trust statutes. These cases were instituted under the respective presidential administrations as follows: During Harrison's four years, seven cases; during Cleveland's four years, eight; during McKinley's four and a half years, only three; during Roosevelt's seven and a half years, forty-four; during Taft's four years, eighty, and during the first three and two-thirds years of Wilson's first administration, thirty-two. The subject matters of these suits cover a wide range and indicate both the reach of Trust development and the extension given to the anti-trust law. A score of the suits were against organized laborers. These labor suits begin with the notable injunction cases against the draymen of New Orleans in 1893 and against members of the American Railway Union during the

Pullman Strike of 1894 and continue to appear occasionally on the calendar down to the filing of indictments April 27, 1915, charging a conspiracy amongst labor unions in Chicago to prevent the installation of certain lighting fixtures. A number of these labor cases were dismissed. In others injunctions were granted. Merely nominal penalties were assessed in two of the cases, fines aggregating only $110 in a Louisiana case against seventy-two laborers, and sentences of four hours' confinement each against members of a Florida longshoremen's association who entered pleas of guilty to a charge of combining, conspiring, and agreeing upon rules for employment of workmen loading lumber vessels.

There were a number of suits against railway, wharf, and ocean shipping consolidations, including two of the leading cases in the interpretation of the Sherman Act, the Joint Traffic Association case, and the Northern Securities case.

There are many cases against combinations to control (1) Food supplies: sugar, meat, salt, groceries generally, butter, eggs, milk, ice, coffee, fruit, vegetables, canteloupes, breakfast foods, corn and corn products, wheat, oats, rye, and fresh fish; (2) Fuels, such as coal, oil, and kindling wood; (3) Household and manufacturing supplies, such as enamelware, plumbers' supplies, aluminum wares, incandescent lamps, thread, clothes-wringers, school and church furniture, umbrella material, magazines, stationery, paper and paper boards, cash registers, lumber, stone, gunpowder and other explosives, tallow, fertilizers, paving bricks, wires and cables, shoe machinery, boot and shoe lasts, iron and

steel and other products, harvesting and agricultural machinery, posters, licorice paste, elevators, drugs and patent medicines, turpentine and resins, coal tar products, photographic supplies, telephones, gasolene tanks, gasolene pumps, and horseshoes. Even such sources of more or less innocent amusement as bicycles, motion picture machines, tobacco, whiskey, and tin cans have been compelled to answer the call of the court on anti-trust grounds!

The net result of all this quarter century of Trust prosecution has been the collection of less than $600,000 in fines, a few mild confinement sentences, occasional grants of injunction and, particularly since 1911, some actual dissolutions of giant combinations. More important than these particular penalties has been the development of a general understanding in the business world that the Government will prosecute and that the courts will penalize if the anti-trust law is violated. This understanding has doubtless prevented the formation of combinations which would have been in peril of the law, and it has certainly aided in lessening the use of predatory competitive methods by big business.

The course of the court interpretation of the Sherman Act has not run entirely smoothly. Its earlier interpretations well nigh nullified the law. This accounts, in no small part, for the infrequent prosecutions of Trusts before 1905. Although one hundred and seventy-four cases were instituted under the Sherman Act during its first twenty-six years, only twenty-three of these cases were begun during the first fourteen years under that act.

By 1904 and 1905, notably in the Addyston Pipe

Company case and the Northern Securities case, the court had made clear the way for effective and sweeping application of the law. The deluge of prosecutions followed, more than a hundred cases being filed in the Federal Courts in the eight years beginning 1905.

In May, 1911, came the famous decisions of the Federal Supreme Court in the Oil and the Tobacco cases. These established definitely the interpretative doctrine of the "rule of reason." This doctrine had been used in application of the common law against monopolies and combinations in restraint of trade before the Sherman Act was passed. It had been invoked in dissenting opinions in the leading cases in 1904 and 1905 under the Sherman Act. It required, however, the almost unanimous decision of the Supreme Court in these elaborately prepared 1911 cases to give to the Sherman Act, authoritatively, its present meaning.

A brief review of eight leading cases under the Sherman Act will show the evolution of the court's interpretation of this law.

The Knight case,* instituted in the Circuit Court in Pennsylvania in January, 1894, and finally decided by the Supreme Court January 21, 1895, was the first case in which the law was given full consideration by the Supreme Court.

The bill in the Knight case charged that the American Sugar Refining Company, a New Jersey corporation, prior to March, 1892, had obtained control of all the sugar refineries in the United States with the exception of the Revere, of Boston, and four refineries in Philadelphia owned respectively by the E. C. Knight Com-

*United States v. E. C. Knight Co., et al. 60 Fed. 306 and 934; 156 U. S., 1.

pany, Spreckels' Sugar Refining Company, Franklin Sugar Refining Company, and the Delaware Sugar House; that these five refineries were competitors of the American and of one another, independently engaged in the manufacture and sale of refined sugar and in trade with the several states and with foreign nations; that the Revere refined annually about 2 per cent., and the four Philadelphia refineries, about 33 per cent. of the total sugar refined in the United States; that in March, 1892, the American Sugar Refining Company, by exchanging shares of its own stock for the stock of the four Philadelphia refineries, came into control of these four refineries and thus became the refiner of 98 per cent. of all the sugar refined in the United States; that to get this control the American Sugar Refining Company had entered into an unlawful scheme to purchase the stock of these competing companies for the purpose of restraining trade and that it monopolized the manufacture and sale of refined sugar in the United States and controlled the price of sugar.

The bill asked that the unlawful agreements be declared void, that the stock of the four companies be returned, and that injunctions be issued preventing the further carrying out of the unlawful contractual agreement and the further violations of the Sherman Act.

In final decision of this case, January 21, 1895, the Supreme Court held that the result of the action of the American Sugar Refining Company in purchasing the four Philadelphia refineries was the creation of a monopoly in the manufacture of a necessary of life which could not be suppressed under the provisions of the

Sherman Act, in the mode attempted in this suit, and that the acquisition of Philadelphia refineries by a New Jersey corporation, and the business of sugar refining in Pennsylvania, bore no direct relation to commerce between the states or with foreign nations.

In stating the opinion of the court, Mr. Chief Justice Fuller said in part:

"The relief of the citizens of each state from the burden of monopoly and the evils resulting from the restraint of trade among such citizens was left with the states to deal with. . . . On the other hand, the power of Congress to regulate commerce among the several states is also exclusive. . . . Commerce succeeds to manufacture, and is not part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. . . . The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article passes from the control of the state and belongs to commerce . . . if the national power extends to all contracts and combinations in manufacture, agriculture, mining, and other productive industries, whose ultimate result may affect external commerce, comparatively little of business operations and affairs would be left for state control. . . . There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle the complainants to a decree."*

*156 U. S. 11, 12, 13, 16, 17.

Justice Harlan alone dissented, holding that "the object in purchasing the Philadelphia refineries was to obtain a greater influence or *more perfect control over the business of refining and selling sugar in this country*,"* and that Federal authority should therefore be asserted over it since its monopoly, achieved by these purchases, gave it power to control, throughout the country, the price of a life necessity.

The effect of the Knight decision was to shatter the popular belief that the great industrial combinations were to be destroyed or controlled under the Sherman Act. The decision seemed to leave all control of manufacturing enterprises to the individual states.

The next important decision by the Supreme Court, under the Sherman Act, was in the Trans-Missouri Freight Association case,† in which the Government filed suit to enjoin certain railroads on the ground that their rate-fixing agreement violated the Trust Act. Eighteen railroads had contracted to fix rates, by agreement, for all traffic west of the Missouri River. The original bill, filed in the Circuit Court of the District of Kansas, November 28, 1892, asked for the dissolution of the association and for an injunction to restrain the several companies from carrying into effect the agreement. This bill was dismissed by the Circuit Court, whose ruling was affirmed by the Circuit Court of Appeals, but was reversed by the Supreme Court.

The railroads claimed: (1) That Congress did not intend the Trust Act to apply to railroads because the

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*156 U. S. 18.

†United States v. Trans-Missouri Freight Association. 53 Fed. 440; 58 Fed. 58; 166 U. S. 290.

Inter-State Commerce Act impliedly gave railroads the right to fix rates. (2) That the Trust Act did not apply to reasonable restraint of trade and that their rate-agreement provided for reasonable restraint of trade.

Mr. Justice Peckham delivered the opinion of the divided court, representing five justices. This majority opinion held: (1) That the Commerce Act and the Trust Act are consistent with each other and therefore the Trust Act applies to railroads just as if there were no Commerce Act. (2) That the Trust Act says *every* contract is in restraint of trade. Therefore, the courts have no right to confine the scope of the Act to contracts in unreasonable restraint of trade. It includes all contracts in restraint of trade whether reasonable or unreasonable. (3) That the agreement, therefore, violated the Trust Act and an injunction was proper, and that the case should be remanded to the Circuit Court for further proceedings in conformity with this opinion.

Covering the first of the above points in the opinion, and relating this case to the Knight case, Justice Peckham said, in part:

"An Act which prohibits the making of every contract, etc., in restraint of trade or commerce among the several states, would seem to cover by such language a contract between competing railroads, and relating to traffic rates for the transportation of articles of commerce between the states, provided such contract by its direct effect produces a restraint of trade and commerce. What amounts to a restraint within the meaning of the act, if thus construed, need not now be discussed.

"We have held that the Trust Act did not apply to a company engaged in one state in the refining of sugar under the circumstances detailed in the case of the *United States v. E. C. Knight Company*, 156 U. S. 1, because the refining of sugar under those circumstances bore no distinct relation to commerce between the states and with foreign nations. To exclude agreements as to rates by competing railroads for the transportation of articles of commerce between the states would leave little for the Act to take effect upon. . . . We think, after careful examination, that the Statute covers, and intended to cover, common carriers by railroad."*

The railroads further contended that, since the Sherman Act was entitled "an Act to protect trade and commerce against unlawful restraints and monopolies," it meant those restraints which the common law regarded as unlawful, that is, only *unreasonable* restraints of trade. In reply to this Justice Peckham said: "We are of the opinion that the language used in the title refers to and includes and was intended to include those restraints and monopolies which are made unlawful in the body of the statute. It is to the statute itself that resort must be had to learn the meaning thereof . . . the plain and ordinary meaning of such language is not limited to that kind of contract alone which is in unreasonable restraint of trade, but all contracts are included in such language, and no exception or limitation can be added without placing in the act that which has been omitted by Congress. . . . If the act ought to read as contended for by the defendants, Congress is the body to amend it and not this

*166 U. S. 313, 326, 327.

court, by a process of judicial legislation, wholly unjustifiable."*

Justices White, Field, Gray, and Shiras dissented from this opinion, holding as the leading theme of an elaborate argument that Congress must have meant to forbid only such agreements as were in *unreasonable* restraint of interstate trade. This part of the dissenting opinion was destined, fourteen years later, to become the central proposition of the court opinion in the famous Oil and Tobacco cases. But for the time being, although the court was nearly evenly divided, the majority opinion determined the meaning of the anti-trust law for the nation and this majority opinion reaffirmed the Knight case distinction, asserted the application of the Trust Act to railways, and held that the act forbade all agreements, reasonable or unreasonable, which restrain interstate trade.

In the Joint Traffic Association case† the decision by the Supreme Court, October 24, 1898, again by a divided vote, reaffirmed the Trans-Missouri case decision and held that this agreement of thirty-one railroads engaged in transportation between Chicago and the Atlantic coast to determine what rates should be charged and what portion of the business each company should do, was in violation of the Sherman Act because it affected interstate commerce by destroying competition.

The constitutionality of the Sherman Act as construed in the Trans-Missouri case was attacked in this case, the railroads alleging that it deprived the

*166 U. S. 327, 328, 340.

†United States v. Joint Traffic Association, 76 Fed. 895; 89 Fed. 1020; 171 U. S. 505.

citizen of the liberty guaranteed him by the fifth amendment to the Constitution. Summarizing the court's opinion as to the constitutional issue, Justice Peckham said:

"Notwithstanding the general liberty of contract which is possessed by the citizen under the Constitution, we find that there are many kinds of contracts which, while not in themselves immoral or *mala in se*, may yet be prohibited by legislation of the states, or, in certain cases, by Congress. The question comes back whether the statute under review is a legitimate exercise of the power of Congress over interstate commerce and a valid regulation thereof. The question is, for us, one of power only, and not one of policy. We think the power exists in Congress, and that the statute is therefore valid."*

The Addyston Pipe case,† decided by the Supreme Court, December 4, 1899, further affirmed the Knight case by emphasis of the contrast between the two. In this Pipe case the defendants were six corporations manufacturing cast iron pipe which they sold throughout thirty-six states. They formed an association whereby they agreed not to compete with one another. The plan was that a committee, consisting of a representative from each corporation, set the price for each job. The corporation which would give the largest bonus for the job got it, the others putting in higher bids to make an apparent competition.

The undivided opinion of the court in this case was that the arrangement eliminated all competition and was therefore clearly in violation of the anti-trust

*171 U. S., 572, 573.

†Addyston Pipe and Steel Company v. United States. 175 U. S. 211, see also 78 Fed. 712, 85 Fed. 271.

act of Congress, so far as it applied to sales for delivery beyond the state in which the sale was made.

Contrasting in the court's opinion this case with the Knight case, Mr. Justice Peckham said, in part:

"The direct purpose of the combination in the Knight case was control of the manufacture of sugar. There was no combination or agreement, in terms, regarding the future disposition of the manufactured article; nothing looking to a transaction in the nature of inter-state commerce. The probable intention on the part of the manufacturer of the sugar to thereafter dispose of it by sending it to some market in another state was held to be immaterial and not to alter the character of the combination. . . . The combination (of the pipe manufacturers) thus had a direct, immediate, and intended relation to and effect upon the subsequent contract to sell and deliver pipe. It was to obtain that particular and specific result that the combination was formed, and, but for the restriction, the resulting high prices would not have been obtained."*

The attorneys for the pipe manufacturers refined the constitutional question, raised in the Traffic Association case, by arguing that although Congress might have constitutional right to deal with contracts of such quasi-public corporations as common carriers, elevators, gas and water companies, it has no constitutional right to interfere with or prohibit private contracts between citizens even though such contracts have interstate commerce for their object and result in a substantial obstruction of that commerce. An essential part of the court's answer to this argument, in Justice Peckham's words was: "Congress, in our judgment, may en-

*175 U. S. 240, 243.

act such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract will be, when carried out, to directly, and not as a mere incident to other and innocent purposes, regulate to any substantial extent interstate commerce."*

The Northern Securities case,† decided in March, 1904, was of importance because it put aside arguments based on the decision in the Knight case and applied the Sherman Act effectively to dissolve a masterful holding company device in the railway world.

The Northern Securities Company had been organized in New Jersey in November, 1901, with a capital stock of $400,000,000 as a holding company to unite the railway interests of the Great Northern and the Northern Pacific railways. It exchanged its stock at par for Great Northern stock at $180 a share, and for Northern Pacific stock at $115. By the time the suit was brought in the Circuit Court (April, 1903) the Northern Securities Company was the owner of some 96 per cent. of all the stock of the Northern Pacific Company and some 76 per cent. of all the stock of the Great Northern Company. These two companies had already in the spring of 1901 purchased about 98 per cent. of the stock of the Chicago, Burlington and Quincy Railway Company. The Northern Securities Company thus became owner of all the leading railway lines in the northwestern part of the United States.

The court divided again, five to four. Mr. Justice

*175 U. S. 228.

†United States v. Northern Securities Company et al. 120 Fed. 721, 193 U. S. 197.

Harlan delivered the opinion of the majority. To the plea that the holding company had simply purchased stocks of other companies, a parallel to the operations of the American Sugar Refining Company as presented in the Knight case, and that this was not an act in restraint of interstate commerce, the court responded by looking past the form of the business deal to its natural consequences. In part, on this holding company issue, Justice Harlan said:

"No scheme or device could more certainly come within the words of the act—'combination in the form of trust or otherwise . . . in restraint of commerce among the several states and with foreign nations' . . . or could more effectively and certainly suppress free competition between the constituent companies, this combination is, within the meaning of the act, a 'Trust'; but if not, it is a *combination in restraimt of inter-state and inter-national commerce*; and that is enough to bring it under the condemnation of the act. The mere existence of such a combination and the power acquired by the holding company, as its trustee, constitute a menace to, and a restraint upon, that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected. If such combination be not destroyed all the advantages which would naturally come to the public under the operation of the general laws of competition, as between the Great Northern and the Northern Pacific Railway companies, will be lost, and the entire commerce of the immense territory in the northern part of the United States between the Great Lakes and the Pacific at Puget Sound will be at the mercy of a single holding corporation, organized in a state distant from the people of that territory."*

*193 U. S. 327, 328.

As a basis for affirmation of the decree of the Circuit Court that the Northern Securities Company should be enjoined from exercising any control whatsoever over the two great railway systems whose stock it had acquired, Justice Harlan gave a clear summary of the decisions of the court in leading anti-trust cases up to that date, March, 1904. That summary deserves presentation here since it is the official statement of the court status of Federal anti-trust legislation after nearly fourteen years of elaborate consideration:

"We will not encumber this opinion by extended extracts from the former opinions of this court. It is sufficient to say that from the decisions in the above cases certain propositions are plainly deducible and embrace the present case. Those propositions are:

"That although the act of Congress known as the Anti-Trust Act has no reference to the mere manufacture or production of articles or commodities within the limits of the several states, it does embrace and declare to be illegal every contract, combination, or conspiracy, in whatever form, of whatever nature, and whoever may be parties to it, which directly or necessarily operates *in restraint* of trade or commerce *among the several states or with foreign nations;*

"That the act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces *all* direct *restraints* imposed by any combination, conspiracy, or monopoly upon such trade or commerce;

"That combinations even among *private* manufacturers or dealers whereby *interstate or international commerce* is restrained are equally embraced by the act;

"That Congress has the power to establish *rules* by which *interstate and international* commerce shall be governed, and, by the Anti-Trust Act, has prescribed

the rule of free competition among those engaged in such commerce;

"That *every* combination or conspiracy which would extinguish competition between otherwise competing railroads engaged in *interstate trade or commerce*, and which would *in that way* restrain *such* trade or commerce is made illegal by the act;

"That the natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition restrains instead of promotes trade and commerce;

"That to vitiate a combination, such as the act of Congress condemns, it need not be shown that the combination, in fact, results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce or tends to create a monopoly in such trade or commerce and to deprive the public of the advantages that flow from free competition:

"That the constitutional guarantee of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in *interstate and international* commerce; and,

"That under its power to regulate commerce among the several states and with foreign nations, Congress had authority to enact the statute in question."*

Mr. Justice Brewer, in a concurring opinion, stated that he regarded the contracts presented as "unreasonable restraints of interstate trade and, as such, within the scope of the Act."†

The dissenting opinion, held by Chief Justice Fuller, and Justices White, Peckham, and Holmes emphasized

*193 U. S. 331, 332.

†193 U. S. 361.

the parallel to the Knight case, arguing that "ownership of stock in railroads" was "not commerce at all."

Other anti-trust cases of much interest, both before and after this Northern Securities case might be cited, but the substantial position of the majority of the court, as summarized by Mr. Justice Harlan in this Northern Securities case, stood until the Oil and Tobacco cases of 1911 made the ruling which distinguished between reasonable and unreasonable restraints of trade. This is the one essential change in the court interpretation made during the past decade.

The Oil and Tobacco cases were spectacular by mere reason of the size of the Industrial Combinations at the bar. The combinations were leaders in the great Trust army. Their history reached back to the beginnings of Trusts in the country. Their growth, marked by many questionable competitive practices, had gone on steadily until each was not only in substantial national control of its kind of business, but had passed beyond the national boundaries into world trade relationships of such significance as to presage the possible development of world-wide monopolies. The government challenge of these giants was therefore viewed as a marked challenge to the whole great industrial combination movement. The more notable earlier suits had been against railway associations or minor selling combinations. These two suits sought court order of dissolution of two of the greatest manufacturing and selling combinations that had ever been formed. The decisions rendered probably determine the interpretation of the Sherman Act that will stand for the life of that act and the decrees of dissolution

make precedents likely to be followed if other great combinations are later adjudged violators of the Sherman Act.

The Oil case* was brought in a Missouri Circuit Court in November, 1906. The court decided in March, 1907, that all the non-resident corporations making up the Standard Oil combination might be made parties to the suits along with the Waters-Pierce Oil Company, a resident of the State of Missouri. In November, 1909, the suit was prosecuted in this Missouri Circuit Court, the entire set of Standard Oil companies being brought to trial. Decision was rendered against the Trust. Appeal was taken to the Supreme Court of the United States, where the case was argued in March 1910, reargued in January, 1911, and decision rendered May 15, 1911.

The original bill charged that the Standard Oil companies of New Jersey, California, Indiana, Iowa, Kansas, Kentucky, Nebraska, New York, and Ohio and sixty-two other corporations and partnerships together with seven individuals had conspired to restrain and to monopolize interstate trade and commerce in crude oil, refined oil, and other products of petroleum. It asked that the Standard Oil Company of New Jersey, which had, in 1899, become a holding company for all the other members of the combination, be declared to be a combination in restraint of trade and a monopoly, and be enjoined from exercising control in any manner over its constituent members. The Circuit Court had dismissed the case against thirty-three of the defend-

*United States v. Standard Oil Company of New Jersey et al. 152 Fed. Rep., 290; 173 Fed. Rep. 177; 221 U. S. 1.

ant corporations. So the Standard Oil Company of New Jersey, thirty-seven subsidiary companies, and the seven individuals were the appellants before the Supreme Court.

This court, Mr. Justice Harlan alone dissenting, affirmed the decree of the lower court with slight modifications. In substance its decree held the Standard Oil Company of New Jersey to be a combination in restraint of trade and commerce, and a monopoly in violation of the Sherman Act, that it should be dissolved by the transfer back to the stockholders of the subsidiary corporations all stock that had been given to the New Jersey corporation in exchange for its stock; that the New Jersey corporation and the subsidiary corporations should be enjoined from doing anything which would give effect to further ownership by the New Jersey corporation of the stocks which had been transferred. The thirty days allowed by the Circuit Court for carrying the decree into execution was extended to six months, and that part of the lower court decree which enjoined the carrying on of interstate commerce by any of the corporations in the combination until dissolution had been effected, was annulled. The lower court was ordered to retain jurisdiction to the extent necessary to compel compliance in every respect with its decree.

In giving the decision of the Supreme Court, Mr. Chief Justice White, after stating the case, endorsing the inclusion of the non-resident defendants by the Circuit Court, and noting the numerous and seemingly irreconcilable issues of law and of fact, passed on to consider the correct interpretation of sections one and two of the Sherman Act. All parties agreed that the

controversy in every aspect was controlled by a correct conception of the meaning of these two sections. After he had reviewed common law and the law of the United States in restraint of trade, the Chief Justice said, in part:

"The statute under this view evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, which did not unduly restrain interstate or foreign commerce, but to protect that commerce from being restrained by methods whether old or new, which would constitute an interference that is an undue restraint. . . . Thus not specifying but indubitably contemplating and requiring a standard, it follows that it was intended that the standard of reason which had been applied at the common law and in this country in dealing with subjects of the character embraced by the statute was intended to be the measure used for the purpose of determining whether in a given case a particular act had or had not brought about the wrong against which the statute provided. . . . The statute by the comprehensiveness of the enumerations embodied in both the first and the second sections makes it certain that its purpose was to prevent undue restraints of every kind and nature."*

Mr. Justice Harlan, concurring in part, dissented strongly against reading "undue" and "standard of reason" into the act. He cited the majority opinions of the Supreme Court in the Trans-Missouri Freight and the Joint Traffic cases, commenting:

"It thus appears that fifteen years ago, when the purpose of Congress in passing the Anti-Trust Act was fresh

*221 U. S. 60, 62.

in the minds of courts, lawyers, statesmen and the general public, this court expressly declined to indulge in judicial legislation by inserting in the act the word 'unreasonable' or any other word of like import."*

The Tobacco case† decision by the Supreme Court of May 29, 1911, held that the American Tobacco Company combination and all of its constituent elements were illegal, and ordered the Circuit Court to hear the parties and determine upon a method of dissolution of the combination within eight months, and, if necessary, to effect this result either by injunction or by receivership.

The construction of the Sherman Act as given in the Standard Oil case, reading in such terms as "unduly" and resorting to the "rule of reason" was affirmed, and, as before, Mr. Justice Harlan alone dissented and dissented against this "judicial legislation" only.

These two epochal decisions on the Sherman Act gave the new meaning to that act in *obiter dicta*, but these *obiter dicta* were elaborately argued and fully concurred in by all but one member of the court, so that they would seem to have the binding force of ultimate decision. The Sherman Act to-day, by official interpretation of the highest court, seems to stand as it was summarized by Mr. Justice Harlan in the Northern Securities case‡ modified only to allow for the application of the "rule of reason" as set forth in these great decisions in the Oil and Tobacco cases.

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*221 U. S. 90.

†United States v. American Tobacco Company et al. 164 Fed. Rep. 700; 221 U. S. 106.

‡See page 294.

The actual forms taken under enforced dissolutions, guided by the Lower Courts, in these cases, are stated in the appendix outline stories* of the Oil and the Tobacco Trusts.

The same interpretations of the law are being made and the same general forms of relief are being proposed in the other great Trust cases now before the Federal Courts, such as those against the Steel, the Harvester, and the Corn Products combinations. In the District Court decree of November 13, 1916, against the Corn Products Refining Company, the Federal Trade Commission is delegated, as master in chancery, to consider the plan proposed by the company for its own dissolution, to hear all the parties and "report to the court a plan which will effectually dissolve the combination and restore a condition in harmony with the law."

Only eleven anti-trust cases have been filed in the Federal Courts since the Clayton and the Federal Trade Commission acts were passed in 1914, and none of these has yet been decided by the Supreme Court. There are thus no definitive court interpretations of the modifications of the Sherman Act embodied in this 1914 legislation. Only one of these eleven recent cases filed obviously turns upon the new laws. This is the United Shoe Machinery Company case filed in a Missouri District Court in October, 1915, in which this corporation is charged with violation of the Clayton Act through the tying clauses in its series of leases.

*See Appendix D-1 and 8.

APPENDIX A

APPENDIX A

FORMULATION OF SUGGESTED METHODS FOR THE SOLUTION OF THE TRUST PROBLEM

By William Wirt Howe

Permanent Chairman of the Chicago Conference on Trusts*

In what are called courts of conciliation, in some jurisdictions, the constant aim of the presiding magistrate is to note those admissions and concessions of the contending parties themselves which may be found even in apparently hopeless disputes, and to make those admissions and concessions a basis for a judgment substantially just.

Now, following this sensible idea, where do we stand after four days of discussion, always interesting, often profoundly scientific, and sometimes passing into the brilliant sphere of oratory? It seems to me—simply as an individual, of course—that almost every paper or address we have heard has made some admissions or concessions which may form a basis for some conclusions, and if you will allow me I will formulate some of them only, as follows:

1. Combinations and conspiracies in the form of Trusts or otherwise in restraint of trade or manufacture, which by the consensus of judicial opinion are unlawful, should so be declared by legislation, with suitable sanctions, and, if possible, by a statute uniform in all jurisdictions, and also uniform as to all persons, and such a statute should be thor-

*Their statement made in 1900 at the conference called by the National Civic Federation is of value as showing that at that date the crystallized opinion of sensible men with no parties or special interests to serve was far in advance of legislation, and was sufficient, if prompt action could have been taken in accordance therewith.

oughly enforced, so that those who respect it shall not be at a disadvantage as compared with those who disregard it.

2. That the organization of trading and industrial corporations, whether under general or special laws, be permitted only under a system of careful governmental control, also uniform, if possible, in all jurisdictions, whereby many of the evils of which complaint is now made may be avoided.

3. The objects of the corporation should be confined within limits definite and certain. The issue of stock and bonds, which has been a matter of so much just criticism and complaint, should be guarded with great strictness. If mortgage bonds seem to be required, they should be allowed only for a moderate fraction of the true cash value of the property that secures them. As for issues of stock, they should be safeguarded in every possible way. They should only be allowed either for the money or for property actually received by the company, and dollar for dollar, and when the property is so conveyed it should be on an honest appraisement of actual value, so that there may be no watering of stock.

4. And finally, there should be a thorough system of reports and governmental inspection, especially as to issues of bonds and stock and the status and value of property, whether corporeal or incorporeal. Yet, at the same time, in the matter of trading and industrial companies, there are legitimate business secrets which must be respected by the general public. In short, we need to frankly recognize the fact that trading and industrial corporations are needed to organize the activities of our country, and that they are not to be scolded or belied, but controlled, as we control steam and electricity, which are also dangerous if not carefully managed, but of wonderful usefulness if rightly harnessed to the car of progress.

APPENDIX B

FINAL REPORT OF THE INDUSTRIAL COMMISSION 1902*

Recommendations of the Commission.

Early in the year 1900 this Commission submitted to the Congress a preliminary report of findings and recommendations on the subject of industrial combinations. Said report was in part as follows:

To prevent the organizers of corporations or industrial combinations from deceiving investors and the public, either through suppression of material facts or by making misleading statements, your Commission recommend—

(a) That the promoters and organizers of corporations or industrial combinations which look to the public to purchase or deal in their stocks or securities should be required to furnish full details regarding the organization, the property or services for which stocks or securities are to be issued, amount and kind of same, and all other material information necessary for safe and intelligent investment;

(b) That any prospectus or announcement of any kind soliciting subscriptions, which fails to make full disclosures as aforesaid, or which is false, should be deemed fraudulent, and the promoters, with their associates, held legally responsible;

(c) That the nature of the business of the corporation or industrial combination, all powers granted to directors and officers thereof, and all limitations upon them or upon the

*Vol. XIX, p. 649. This report is of historic value. Some of the recommendations have already become law. Others should be enacted into law. It shows that the opinions of experts were distinctly in advance of legislation.

rights or powers of the members, should be required to be expressed in the certificate of incorporation, which instrument should be open to inspection by any investor.

The affairs of a corporation or industrial combination should be carried on, without detriment to the public, in the interest of its members and under their lawful control. To this end the directors or trustees should be required—

(a) To report to the members thereof its financial condition in reasonable detail, verified by a competent auditor at least once each year;

(b) To inform members regarding the method and conduct of business by granting them, under proper restrictions, access to records of directors' meetings, or otherwise.

(c) To provide for the use of members, before the annual meetings, lists of members, with their addresses and their several holdings; and

(d) To provide, in whatever other ways may be named in the certificate of incorporation, means whereby the members may prevent the misuse of their property by directors or trustees.

The larger corporations—the so-called trusts—should be required to publish annually a properly audited report, showing in reasonable detail their assets and liabilities, with profit or loss; such report and audit under oath to be subject to Government inspection. The purpose of such publicity is to encourage competition when profits become excessive, thus protecting consumers against too high prices and to guard the interests of employees by a knowledge of the financial condition of the business in which they are employed.

The further consideration given to the subject by the Commission has justified in nearly all particulars our former conclusions and recommendations. Since that report was made, combinations and their methods, both here and in

Europe, have been more thoroughly studied. The influence of combinations in the United States in extending our foreign trade and the methods and influence of foreign combinations in competition with them have been observed. These matters are presented in accompanying volumes.

We now further recommend—

1. That district attorneys of the United States be authorized and directed to institute proceedings for violations of the Federal anti-trust laws.

2. That combinations and conspiracies, in the form of trusts or otherwise in restraint of trade or production, which by the consensus of judicial opinion are unlawful, should be so declared by legislation uniform in all jurisdictions, and as to all persons, and such statutes should be thoroughly enforced.

3. That stringent laws be enacted by the Congress and the several State legislatures, making both penal and criminal the vicious practice of discriminating between customers, and cutting rates or prices in one locality below those which prevail generally, for the purpose of destroying local competition; and that such laws should give to any person damaged the right to sue for and recover prescribed penalties, and make it the duty of prosecuting officers to proceed against the offenders.

4. That to prevent overcapitalization, the several State legislatures enact laws similar to the anti-stock-watering laws of Massachusetts; also to provide for State supervision of all public-service corporations, with power to recommend or regulate rates for service and to pass upon the public need, desirability, or exigency of any proposed new service.

5. That Plan Three—Federal taxation and supervision—heretofore outlined, be adopted, and to accomplish its purposes—

(a) That an annual franchise tax be imposed upon all

State corporations engaged in interstate commerce, calculated upon the gross earnings of each corporation from its interstate business; that the minimum rate of such tax be low, but that the rate be gradually increased with increases in earnings.

(b) That there be created in the Treasury Department a permanent bureau, the duties of which shall be to register all State corporations engaged in interstate or foreign commerce; to secure from such corporations all reports needed to enable the Government to levy a franchise tax with certainty and justice, and to collect the same; to make such inspection and examination of the business and accounts of such corporations as will guarantee the completeness and accuracy of the information needed to ascertain whether such corporations are observing the conditions prescribed in the act, and to enforce penalties against delinquents; and to collate and publish information regarding such combinations and the industries in which they may be engaged, so as to furnish to the Congress proper information for possible future legislation.

The publicity secured by the governmental agency should be such as will prevent the deception of the public through secrecy in the organization and management of industrial combinations, or through false information. Such agency would also have at its command the best sources of information regarding special privileges or discriminations, of whatever nature, by which industrial combinations secure monopoly or become dangerous to the public welfare. It is probable that the provisions herein recommended will be sufficient to remove most of the abuses which have arisen in connection with industrial combinations. The remedies suggested may be employed with little or no danger to industrial prosperity and with the certainty of securing information which should enable the Congress to protect the public by further legislation if necessary.

6. That, if a department of commerce and industry shall be established, one of its functions should be to call attention from time to time to such economic changes in the world's progress as may suggest tariff modifications, and also to such commercial opportunities as may suggest reciprocal legislation or arrangements, and furthermore to any evils incident to combinations which changes in the tariff will correct.

7. That in view of the extent and perfection of our manufactures, of our growing export trade and the sharp competition it encounters in foreign markets, of the practice by some exporters of making lower prices abroad than at home, and of the desirability of protecting the consumer as well as the producer, without awaiting other legislation, the Congress provide for a commission to investigate and study the subject, and to report as soon as possible what concessions in duties may be made without endangering wages or employment at home, what advantages abroad may be obtained therefor, and also to suggest measures best suited to gain the ends desired.

If experience shall prove that these remedies are not sufficient to properly control the great corporations and combinations, it may be wise for the Congress to enact a Federal incorporation law. Should such a law be enacted, it would then be possible to increase the franchise tax upon State corporations engaged in interstate commerce so as to compel them to reorganize under the Federal law. When organized under a Federal law, it would be possible, as has been pointed out, to apply to corporations any degree of publicity or restriction that might be authorized. In the meantime the separate states should amend their corporation laws so as to require greater publicity, as outlined in our preliminary report.

The evils of discriminations in freight rates and their influence in aiding and promoting monopolies have been

clearly shown. The recommendations of the Commission relative thereto will be found under "Transportation."

ALBERT CLARKE, *Chairman*
BOIES PENROSE
THOMAS R. BARD
JOHN J. GARDNER
JNO. C. BELL
THEO. OTJEN
WM. LORIMER
ANDREW L. HARRIS
JOHN M. FARQUHAR
THOS. W. PHILLIPS
EUGENE D. CONGER
C. J. HARRIS
J. L. KENNEDY
CHAS. H. LITCHMAN
D. A. TOMPKINS

APPENDIX C

PROPOSED NEW YORK BUSINESS COMPANIES' ACT*

Powers and Purposes

Under the title, Powers and Purposes, the usual provisions regarding legal standing and acts are made, and special ones are added giving powers : . . . to the same extent and in the same manner that a natural person might do.†

*This bill, which was framed to carry out the suggestions in Governor Roosevelt's annual message sent to the Legislature, January, 1900, was in form a complete Business Corporation Law. It was intended not to repeal the present law, but to provide an alternative law under which corporations that wished to do so might organize and act; others might act under the present law.

As will be seen, the proposed act gives much greater privileges to corporations in many particulars than does the present law. In other respects, especially as regards publicity of accounts and of business methods, the responsibility of directors, etc., it is much more rigid. Corporations of the highest type as regards financial stability and management, having nothing to conceal for which the bill calls, might well wish to organize under it to give them standing as well as to secure its privileges. Speculative corporations could not well do so. The line would thus be drawn between the two classes, to the manifest advantages of investors and of the public.

The provisions giving privileges to sound corporations under proper restrictions were largely suggested by the late James B. Dill, Esq., of the New York Bar, author of "Dill on New Jersey Corporations," and they are to a considerable extent modelled after the New Jersey laws with additional safeguards for the public interests. The provisions regarding Promotion, Auditing, and the Annual Report are taken largely from the Corporation Laws of Victoria, modelled after those of England. All the provisions of the bill were submitted to many persons qualified to criticise them—corporation lawyers, professors of corporation law, lawyers with no interest in corporations, prominent business men, chartered accountants, and others—and valuable suggestions were received from all, the effort being made to make the act as rigid regarding publicity as it could be made without endangering the interests of sound business. It is believed that the enforcement of such a law would gradually do away with a large part of the evils of the Trusts.

†As one of the authors of this book, Mr. Jenks, took the final responsibility of the acceptance or rejection of all suggestions made in its preparation, he has felt at liberty to make changes in the parts here reprinted and to add some brief explanatory notes. The only parts of the bill printed are those that are not found in the Corporation Laws of New York, or those that are needed to show the spirit of the act. The most important provisions are printed in full.

It may exercise the same powers outside the State of its origin as within it, subject always to the laws of the State in which it is doing business, but no corporation shall possess or exercise the above mentioned or any other corporate powers, except such incidental powers as shall be necessary to the exercise of its powers above mentioned, unless they are contained in the certificate of incorporation. . . .

*Registered Office and Agents**

Every corporation organized under this act shall have and keep continuously a registered office in this State, and an agent in charge thereof, which agent must sign the certificate of incorporation.

Every registered agent shall, during the month of April of each year, file a statement† as of the first of April, under oath, with the Secretary of State of New York, which shall specify:

1. The names of the corporations for which he is the registered agent.

2. Whether such corporations have or have not made their annual report.

3. Whether the names of these corporations have been at all times displayed before their registered office.

4. Whether the provisions regarding the keeping and inspection of stock and transfer books have been fully complied with. . . .

* * * * * * *

It will be observed that large powers are conferred; but these powers must be fully declared in the certificate of incorporation, and very rigid provisions to prevent abuses are made.

*This provision is entirely new, and is intended to aid in securing proper annual reports.

†The provisions regarding a registration office and agent will enable any person who has a right to know, to secure regularly and easily any information needed, and will enable the State much more readily to enforce its restrictive regulations. This provision is from the New Jersey law, with additional regulations.

*Certificate of Incorporation**

The certificate of incorporation shall be signed in person by all the subscribers to the capital stock named therein and by the registered agent.

The certificate of incorporation shall contain the usual provisions in detail and, may contain any provision not inconsistent with this act, which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and must contain all the provisions creating, defining, limiting, and regulating the powers of the company, the directors, and stockholders, and of any class or classes of stockholders, or any right or rights of specific stockholders. No provision creating, defining, differentiating, limiting and regulating the powers of the corporation, the directors, the stockholders, or any class or classes of stockholders, shall be valid unless inserted in the certificate of incorporation or in an amendment thereof. . . .

The certificate of incorporation shall be proved or acknowledged as required for deeds of real estate, and filed in the office of the Secretary of State. Said certificate or a copy thereof duly certified by the Secretary of State shall be evidence in all courts and places. A copy of the certificate must also be kept in the registered office of the company, and a copy must be furnished by the registered agent to any person demanding the same, on payment of a charge of not more than one dollar.

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*It was thought wise to encourage the formation of corporations wishing to do a sound conservative business, and through publicity to discourage the purely speculative ones. The full statements required in the certificate of incorporation, which is accessible to any person, would in very many cases make clear to investors and the public the nature of the business and the protection afforded shareholders, and would warn careful people against risks.

*Incorporation Fees**

Amendment of Certificate†

Every corporation organized under this act may change the nature of its business, change its name, increase its capital stock, decrease its capital stock, change the par value of the shares of its capital stock, change the location of its registered office in this State, extend its corporate existence, create one or more classes of preferred stock, and make such other amendment, change, or alteration as may be desired, in the general manner provided in the New Jersey law, except that it is provided, that such certificate of amendment, change, or alteration shall contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment; and provided further that in case the corporation by such amendment proposes to undertake business which is not of the same general character as that provided in the original certificate, or creates one or more new classes of stock, or gives to certain classes of stock or bonds new privileges, or increases the amount of the capital stock, a vote of four-fifths of each class shall be required, and any dissenting stockholder may declare his dissent in writing at the meeting called for the purpose of amendment, and may sell to the company and the company shall buy for cash his holdings of stock at a valuation appraised in the manner provided for dissenting stockholders in case of merger or consolidation of companies. If such dissent is declared in writing at the meeting, the subsequent proceedings for appraisement and

*These fees are placed at the rates now paid in New Jersey.

†While the interests of minority stockholders have been fully protected by requiring a four-fifths vote and the purchase for cash at an appraised valuation of the stock of dissenting stockholders, it is recognized that a few ought not to be permitted to block the plans of a large majority.

purchase may be enforced at the instance of either party. . . .

*Reincorporation Under Act**

* * * * * * * * * *

Act Optional†

All companies existing at the coming into force of this act, and all companies hereafter organized under the present business corporation laws, unless they elect to put themselves under the provisions of this act in the manner prescribed in the preceding sections, shall remain subject to the other corporation laws relating to them, as if this act had not been passed.

Directors

No by-laws adopted by the board of directors regulating the election of directors or officers shall be valid, unless a copy thereof shall be delivered or mailed to each stockholder of record at least thirty days before such election.

Every stockholder shall be entitled to receive, and every corporation by its officers and board of directors shall be bound to furnish, any stockholder upon request, at the expense of the corporation, a copy of the certificate of incorporation and of the by-laws.

Any corporation organized under this act may classify its directors in respect to the time for which they may hold office, the several classes, however, to be, as nearly as is numerically possible, equal in number and elected for different terms. Provided,

*The intention was to encourage foreign corporations, wishing to do a conservative business, and domestic corporations of like character, to reincorporate under this act. This section would make the process a very simple one.

†The act was to be an optional one. A radical revision of a general corporation act, without due warning, could not fail to work injustice in many cases. A good law which should encourage sound business would throw discredit upon unsound methods. Later, other acts might, with due warning, be repealed.

1. That no class shall be elected for a period shorter than one year except at the first election, for the first year, or for more than five years, and

2. That the term of office of at least one class shall expire each year.

Any corporation which shall have more than one kind of stock, by making suitable provision in its certificate of incorporation, may confer the right to choose the directors upon the stockholders of any class or classes, or upon the bondholders, to the exclusion of others, subject, in case this power is granted by amendment, to the right of minority stockholders provided in the previous section regarding amendments to the certificate of incorporation.*

Duties of Directors Regarding Elections

The directors of every company organized under this act shall cause the registered agent, or other transfer agent designated by them as having charge of the said books, to make, at least ten days before every election after the first election, a full, true, and complete list, arranged in alphabetical order, of all the stockholders entitled to vote at the ensuing election, with the post-office addresses, not the registered office of the corporation, of each, and the number of shares of each kind of stock held by each, which list shall, at all times during the usual business hours, be kept at such registered office open to examination by any stockholder.

The board of directors shall produce at the time and place of every election of directors, such books and such list, there to remain during the election. A copy of such list shall be mailed to any stockholder within five days after his request is received, upon payment in advance of cost of copying at not more than ten cents per folio of one hundred words.

*Through the classification of directors, incorporators at times extend their power through a long series of years. These provisions, it is thought, would prevent many such abuses, while retaining the benefits of classification.

The neglect or failure of the said directors of a corporation with a capital stock of five hundred thousand dollars or upward to cause the said books so to be kept, or to cause the said list to be so made and filed, or to produce the said books or said list at the time of any election, shall render them ineligible to hold office as directors, or any other office in the company for the period of one year thereafter.*

In addition to the penalty above named for failure the sum of one hundred dollars each may be collected from any or all of the directors at the suit of any stockholder, for his own use. Delinquent directors of corporations with a capital stock of less than five hundred thousand dollars shall be subject to the last named penalty only.

Officers†

Besides the usual officers an auditor or auditors shall be chosen by ballot by the stockholders at their annual meeting, and no person or firm or corporation, a member, director, or officer of which is a director of the company to be audited shall be eligible. Corporations organized under this act with a capital stock of one hundred thousand dollars or upward, must select as auditor or auditors a person, firm, or corporation duly qualified and engaged in the practice of public accounting and auditing in this state. And the auditor or auditors selected by a corporation whose capital stock amounts in all to one million dollars or more must have his or their financial responsibility secured by a bond of fifty thousand dollars of some surety company authorized

*This penalty was introduced in 1900 into the Corporation Law of New Jersey, and has already proved very effective in preventing negligence in carrying out the provisions of that law.

†The provisions regarding auditors are intended to protect shareholders against misuse of power by directors. Every effort is made to identify the interests of auditors and shareholders. The provisions regarding bonds of auditors will make their responsibility a real one. The further provisions regarding officers are likewise needed to hold them responsible to shareholders.

to do business under the insurance laws of this state. . . .

Corporations with five hundred thousand dollars capital stock or upward must appoint a general counsel, who shall be counted in the list of officers.

Any stockholder shall be entitled upon payment of cost of copying at not more than ten cents a folio of one hundred words, to a statement at any time of all salaries paid to any officer or officers of the corporation, together with a statement of all contracts or agreements in which any officer of the corporation may be interested either as a contracting party with the corporation or as an officer or stockholder in any other corporation contracting with the company. . .

If any certificate made, or any public notice given by the officers or directors of any corporation in pursuance of the provisions of this act shall be false in any material representation, all the officers or directors who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the corporation contracted while they were directors or officers thereof, as a penalty enforceable in the courts of this state only.

Meetings

The first meeting and the annual meetings of stockholders must be held at the registered office; directors' meetings may be held elsewhere.

At the regular annual meeting, for which provision must be made in the certificate of incorporation or in the by-laws, the shareholders' balance-sheet prepared and certified by the auditors as provided later must be presented to the shareholders. If the directors or other officers of any corporation organized under this act shall fail or neglect to call in the manner provided by law the annual stockholders' meeting at the time appointed in the certificate of incorporation or in the by-laws and shall not hold the same accordingly there-

upon, from the time when said meeting was appointed to be held until the meeting shall actually be held thereafter, all salaries of president, vice-presidents, secretary, treasurer, and directors shall cease and determine, and it shall be unlawful for any corporation or its officers or directors to pay directly or indirectly any salary or compensation to any of the above-named officers or to any director for services rendered in the interim.

At the annual meeting any shareholder shall be entitled to require from the company, and the directors shall be bound to furnish him with a copy of all or any parts of the directors' records of meetings.

Stock and Certificates

If provided in the articles of incorporation, preferred and common stock may be issued; but liability of holders of all classes is limited to the payment for the stock itself at par value. Bondholders may be given voting powers equal to those of stockholders.

Every stockholder shall be entitled to receive a certificate of stock signed by two officers of the corporation. Every certificate of stock and every bond shall specify the amount of capital stock authorized to be issued by said corporation, the amount of each class, if there is more than one class, also the amount of each class issued for cash and for other consideration, the par value of each share, and the location of the registered office of the company, and shall disclose fully and fairly any qualification or restriction contained in the certificate of incorporation affecting the right of the stockholder, or in case of bonds of the bondholder, by way of voting power or otherwise.*

Any corporation or individual countersigning the said

*A new provision. It will be noted that the certificate gives each investor full information regarding his rights.

stock or bonds, either as transfer agent or as registrar of the stock, shall be deemed to guarantee the legality and regularity in all particulars of the transfer, unless the countersign itself shall give notice in clearly legible characters that said countersigning agent limits or refuses responsibility.

Every share of stock shall be deemed to be issued and shall be held subject to the payment of its par value in cash, unless before the issuance of said stock a contract shall be filed in the registered office of the company which shall truly and fully disclose in detail the consideration for which the said stock is issued, whether the same be for property, services, or otherwise.

In case any stock is issued for consideration other than cash, every share of stock shall have stamped across its face a statement that stock has been issued in accordance with a contract filed in the registered office and the proportion of shares of each class so issued.

Every such contract so filed in the registered office shall truly and fully disclose the consideration for which said stock is issued, the parties to whom such stock is issued, and the real parties in interest. Such contract shall be open during regular office hours to the inspection of any one and a copy thereof shall be furnished by the registered agent of the corporation to any one requesting it and advancing the cost of making a copy thereof, which cost shall not exceed the sum of ten cents per folio of one hundred words.

In every annual report made by the company, the amount of capital paid in cash and the amount otherwise issued in pursuance of the provisions of the foregoing sections shall be stated, together with the specific amounts issued during the two years next preceding.*

The judgment of the board of directors as to the value of

*This provision is substantially that of the law of Victoria and in substance has been adopted by the new amendment of 1900 to the English Act. If even fairly enforced, it will largely destroy the power of the dishonest promoter and director.

the consideration other than cash thus received by the company shall be final and conclusive upon all parties, provided that all the provisions of this act relating thereto be fully carried out, and that the contracts fairly and fully disclose the real nature of the bargain thus recorded.*

Where the whole capital of the corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or such proportion of that sum as shall be required to satisfy such debts and obligations.

No loan of money shall be made to any stockholder to enable such stockholder to withdraw in effect any part of the money paid in by him on his stock†; and if any such loan be made, the officers who make it or assent to it shall be jointly and severally liable to the extent of such loan and interest for all the debts of the corporation until the repayment with interest of the sum so loaned.

Penalty for Delinquent Officials

The president and secretary, or treasurer, upon the payment of the amount of capital subscribed in the certificate of incorporation, whether up to the amount authorized by its certificate or in addition thereto, if increased in the manner provided by this act, shall make a certificate stating, in addition to the requirements of section eighteen of this act,

*The limitation of liability of shareholders and the acceptance of the judgment of directors as to values of property are very liberal provisions. Under present laws the practice is much the same as it would seem to be under this bill so far as stock-watering goes, but the provisions of this bill regarding publicity would largely remove the temptation to water stock and would render the practice innocuous if it were continued. Moreover, when there is danger arising from a failure of judgment or a misunderstanding on the part of directors, the more conservative and conscientious men often refuse such positions, thus putting the management of our corporations into the hands of the reckless and unscrupulous. This bill tries to recognize actual business conditions, and not to put penalties upon honesty.

†A not uncommon practice now.

the amount of capital so paid, whether paid in cash or otherwise; the total amount of capital, if any, previously paid in and reported, with the date of such report, and also stating with regard to any such additional stock thus issued for consideration otherwise than cash, the date of filing the contract determining such issue. This certificate shall be signed and sworn to by the president and secretary or treasurer, and the directors shall, within ten days, cause the certificate to be filed in the office of the Secretary of State and a copy thereof in the registered office of the company. In case of their failure so to do, the directors of the company whose terms shall expire at the next annual election shall each and all be disqualified for a period of one year from being elected or serving as directors or officers of the corporation; but a director may avoid the penalty by showing his efforts to have the certificate filed and furnishing the information.

If any of the said officers or directors shall neglect or refuse to perform the duties required of them in section seventy-five for ten days after being requested in writing so to do by any creditor or stockholder of the corporation, the directors so neglecting or refusing shall be jointly or severally liable for all the debts of the company contracted before the filing of such certificate and until the same shall be filed.

Powers of Corporation to Buy and Sell Stock

Any corporation, if proper provision is made in the certificate of corporation, shall have the power to purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock or securities of other corporations, and, while the owner thereof, to vote upon them to the same extent as natural persons might or could do.

Every corporation shall have the power to purchase or otherwise acquire its own capital stock, but only out of its surplus earnings or in payment or satisfaction of any debt

due the company to such extent and manner and upon such terms as the board of directors by two-thirds vote shall determine, and to reissue the said stock so acquired. Any such purchase or reissue of stock together with price and consideration paid and for which the reissued stock is sold shall be noted in the annual report.*

Promotion†

Every prospectus, announcement, or advertisement of whatever kind, howsoever published, printed, circulated, or issued after the commencement of this act, provided the same is published or issued with a view of obtaining subscriptions for shares or bonds in a company organized under this act, or directly or indirectly inviting persons to subscribe for shares or bonds in a company so organized shall specify:

1. The names and addresses of the promoters and directors and the number of shares held or agreed to be taken up by them respectively and whether wholly paid up or partly paid up and the consideration, remuneration, or reward, if any, to the incorporators, directors, promoters, underwriters or others respectively for becoming incorporators, directors, promoters, underwriters, or members of the company;

2. The date and the names of the parties to any contract directly or indirectly relating to the company or to the promotion thereof entered into by the company or the promoters, directors, or trustees thereof or any person acting as a

*These provisions have been thought dangerous. They might be so, if it were not for other provisions of the act regarding publicity and the power of stockholders to know and control the acts of directors. With those provisions the danger is removed, and these provisions become a safeguard against speculative or ill-disposed stockholders.

†These rigid provisions regarding promotion and auditing are no more than are required in some other countries. The forms for reports have been passed upon by competent auditors, and all agree that no conservative, well-managed company can properly object to such reports going to stockholders. No proper business secrets are disclosed. A sound company, and a promoter who is not primarily a speculator, will rarely be injured by any of these provisions, while the provisions are needed to block evil practices which are now working grave injury to sound business.

trustee or agent for or on behalf of them or any of them, and whether such contract be entered into with the promoters or directors or any of them or any other person whomsoever within two years before the issue of such prospectus whether subject to adoption by the directors of the company or otherwise, and shall also state a place where such contract if in writing may be inspected, which place must be the registered office of the company, if that is yet organized, provided that this subdivision of this section shall not apply to a contract entered into by the company after its incorporation in the ordinary course of the business carried on by the company, unless stock or bonds are issued or to be issued as a consideration;

3. The contents of the articles of incorporation, if any, with the names and addresses of the subscribers thereto and the number of shares subscribed for by them respectively, together with the number of shares fixed as the qualification of a director;

4. The consideration paid or to be paid, and if so, how and when, for any property purchased or acquired or to be purchased or acquired by the company and from whom and when purchased or acquired, with a brief description of the nature of the property and its location if physical property, and whether any part and if so, how much of such consideration money is for good will;

5. The amount, if any, payable as commission, bonus, or reward for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for or for underwriting or guaranteeing the sale of any shares in the company or the rate of any such commission;

6. The minimum subscription upon which the directors will allot the shares subscribed, and begin business;

7. The minimum amount payable on application and allotment on each share;

8. The number and amount of shares issued or agreed to be issued as fully or partly paid up otherwise than in money, and in the latter case the extent to which they are so paid up, and in either case the consideration for which and the person or persons to whom such shares have been issued or are proposed or intended to be issued;

9. The names and addresses of the vendors of any property purchased or acquired by the company or to be so purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of publication of the prospectus and where there is more than one vendor or the company is a sub-purchaser, the amount payable in money or shares to each vendor;

10. The amount or estimated amount of preliminary expenses;

11. The amount paid or intended to be paid in cash or shares or otherwise, to or for any promoter and the consideration therefor;

12. The amount intended to be reserved for working capital;

13. The proposed application of the proceeds of the issue of the shares; and

14. The names and addresses of the auditors or intended auditors, if any, of the company.

A prospectus which does not comply with the preceding section shall be deemed to be fraudulent on the part of the responsible parties knowingly issuing the same.*

Every person taking shares on the faith of such prospectus unless he had actual notice of the particulars omitted from the prospectus shall, in addition to any other remedy he may have, be entitled to sue for rescission of his contract to take shares.

*Parties are fully defined in bill.

In the event of non-compliance with any of the requirements of this act with respect to a prospectus, any person aggrieved shall be entitled to compensation from any person knowingly issuing the same, unless in ways enumerated in the act he can fully exonerate himself. Provisions are fully made also to prevent fraud through the acts of irresponsible persons acting as virtual agents.

For the purpose of this act every contract and fact is material which would influence the judgment of a prudent investor in determining whether he would subscribe for the shares offered by the prospectus.

Any condition requiring an applicant for shares to waive, and any agreement to waive, due compliance with this act or purporting to affect him with notice of any document or matter not specifically referred to in the prospectus shall be void.

Every promoter is in a fiduciary relation toward a company which he is engaged in promoting, and consequently he must make full disclosure as provided in the bill of his relations to and dealings with the company.

*Balance-Sheet**

Every company and the directors and managers thereof—

1. Shall cause to be kept proper books of account in which shall be kept full, true, and complete accounts of the affairs and transactions of the company, and

2. Shall once at least in each year cause the accounts of the company to be balanced and a balance-sheet in this act referred to as the shareholders' balance-sheet to be prepared, which balance-sheet after being duly audited shall be

*It will be observed that this balance-sheet is not published, but is given to the shareholders. Of course, in the case of large companies whose stocks are on the stock market, this is equivalent to publication; while a small private corporation with but few members would be able to confine knowledge of its affairs to its few stockholders and the proper officers of the state.

laid before the members of the company in next general meeting; and

3. Shall cause a copy of such shareholders' balance-sheet so audited to be sent to the registered address of every member of the company at least seven days before the meeting at which it is to be laid before the members of the company and a copy to be deposited at the registered office of the company for the inspection of the members of the company during a period of at least seven days before that meeting, and every shareholder in the company or any person acting in his behalf shall be entitled to other copies thereof on payment of twenty-five cents each.

The shareholders' balance-sheet shall be in such form as is directed by the certificate of incorporation or the by-laws or by a resolution of the company and shall show in every case—

1. The amount of share capital authorized, the amount issued, and the amount paid up thereon, distinguishing the amount of share capital paid up in money and the amount paid otherwise than in money, with statement of nature of the consideration and the arrears of calls due, and the specific amounts issued during the two years next preceding;

2. The amount of debts due by the company, specifying the security if any, allocated for each debt and distinguishing the amount of mortgages, debentures, and floating charges against the general assets of the company, the amount of the reserve fund, if any, and the amount of any contingent liabilities;

3. The amount of all current assets, after making a proper deduction for debts considered to be bad or doubtful; any debts due from directors or other officers to be separately stated;

4. Whether the assets other than debts due to the company are taken at cost price or by valuation, or on what other

basis they are reckoned, and whether any and if so what amount of percentage has been written off and what other provision, if any, has been made for depreciation;

5. The gross amount of the year's earnings, the deductions made from the same for fixed charges of interest and taxes and the surplus, if any, available for dividends;

6. The amount by which the gross value of the assets of the company has been increased since the last balance-sheet in consequence of any increase in the valuation of real or personal property belonging to the company;

7. The amount of property, if any, for which shares were issued, which has been sold since the last report with a full disclosure of the consideration therefor in detail, the parties to the contract, and the real parties in interest.

The shareholders' balance-sheet shall be accompanied by a certificate signed by two or more of the directors on behalf of the board stating that in their opinion the balance-sheet is drawn up so as to exhibit a correct view of the state of the company's affairs and that in their opinion the statement is correct.

A copy of the balance-sheet shall be sent to each director at least ten days before the annual meeting, and unless he formally at or before the meeting makes statement to the contrary, he shall be held to have also signed the report.

Duties of Auditors

The auditors of every company are to give detailed reports prescribed in the Act. . . .

If the auditors or any one of them think there is just cause to disapprove of any part of the said accounts presented to the members of the company, they or any one of them may disallow any part of the said accounts so disapproved of and shall report their or his disapproval in writing on the accounts and balance-sheet.

Every such report and balance-sheet shall be read before the company at the next general meeting.

Any auditor who shall wilfully or through gross negligence certify that any false or fraudulent balance-sheet or account is correct, shall be civilly responsible to any party injured.

Private Balance-sheet

The auditors of every company before making a report pursuant to the last preceding section shall require, and the directors and president of the company shall without unnecessary delay supply to the auditors, a balance-sheet, in this act referred to as the private balance-sheet, giving the details on which the shareholders' balance-sheet is founded and showing amongst other things the amount of deduction, if any, for debts considered to be bad or doubtful.

The private balance-sheet must be signed by the president, treasurer, and by at least two of the directors of the company when there are not more than three directors, and by three at least when there are more than three directors.

The auditors may require the directors, treasurer, and president of the company to supply in writing, signed as hereinbefore provided, any further details or information affecting the balance-sheet or any particular item comprised therein, and shall sign a certificate at the foot of the private balance-sheet stating whether or not all their requisitions as auditors have been complied with.

The private balance-sheet shall not be issued to the members of the company, but shall together with all such further details and information as aforesaid be kept by the directors as part of the records of the company.

Annual Report

Every corporation organized under this act shall annually file in the office of the Secretary of State for use of the

Comptroller and other state officials acting in their official capacity, but not for public inspection, and also in the registered office of the company, a report, which said report shall be at all times open to the inspection of the stockholders, upon request, and a copy of such report shall be furnished to any stockholder by the corporation upon the pre-payment of a reasonable charge for making the same, which charge shall not exceed the sum of ten cents per folio of one hundred words.

Said report shall be filed within three months after the first of January in each year; shall be authenticated by the signatures of the president and one other officer of the company, or by any two directors and shall contain more than the usual report including the balance-sheet in detail. . . .

For failure to file the annual report the corporation shall forfeit $300, and—besides what is far more important—

If such report be not so made and filed before the time appointed for the holding of the next annual election by the stockholders, all of the directors of any such domestic corporation in office during the default shall at the time appointed for the next election, and for a period of one year thereafter, be thereby rendered ineligible for election or appointment to any office in the company as directors or otherwise.

But provision is made to exempt a director who is not at fault, and who makes personally, so far as possible, such a report.

The Secretary of State shall upon application furnish blanks in proper form and shall safely keep in his office all such statements, and issue to the corporations filing the same his certificate therefor.

Merger and Dissolution

Corporations may be merged; but only on vote of two-thirds of the stock of each corporation, and any dissenting

stockholder is to have his stock taken for cash at an appraised valuation.

Provision is made for voluntary dissolution of corporations.

Monopoly Act Not Repealed

Nothing in this act shall be construed to repeal any of the provisions of the existing laws of this State regarding monopoly or the formation of monopolies.

APPENDIX D

OUTLINE HISTORIES OF REPRESENTATIVE TRUSTS IN THE UNITED STATES

1. Standard Oil Company
2. American Sugar Refining Company
3. American Tobacco Company
4. United States Steel Corporation
5. International Harvester Company

1. STANDARD OIL COMPANY*

The outline history of the American oil combination falls naturally into three periods: 1872 to 1882; 1882 to 1899; 1899 to the present.

In 1870 John D. Rockefeller, William Rockefeller, and several others who, prior to 1870 and under three separate partnerships had been engaged in refining and shipping oil, organized a corporation known as the Standard Oil Company of Ohio. The business of the three partnerships was transferred to this corporation. Other like businesses were acquired so that by 1872 the combination had acquired nearly all of the two score of oil refineries located in Cleveland, Ohio. Preferential railway rates were secured by this corporation and by means of this advantage, competitors were virtually forced to join or to quit business. The corporation acquired from time to time a large number of other refineries in New York, Pennsylvania, Ohio, and elsewhere.

*This story is compiled from the opinion of the U. S. Supreme Court in the *Standard Oil Company of New Jersey et al. v. the United States* (221 U. S. 1.), from the U. S. Bureau of Corporations Report on the Petroleum Industry, from Moody's and Poor's *Manuals of Industrials*, and from Stevens' *Industrial Combinations and Trusts*.

See p. 182 for treatment of employees by The Standard Oil Company.

Some refineries acquired were dismantled. Many of the properties acquired were kept as apparent competitors of the Standard.

Control of pipe lines for transport of oil from the oil fields to the refineries in Cleveland, Pittsburg, Titusville, Philadelphia, New York, and New Jersey was obtained by the oil combination after hard battling in the hot competitive style of the American late seventies and early eighties.

By 1882 the combination had won control of about 90 per cent. of the business of producing, shipping, refining, and selling petroleum and its products.

The second period begins with the drafting of the trust agreement in 1882. Nine trustees issued Standard Oil Trust certificates to represent the interest in the forty corporations and the various other properties held for the benefit of the combination. Under the trust agreement these nine trustees managed the entire business. They were empowered to form additional corporations in various states. Soon after they organized the Standard Oil Company of New Jersey and the Standard Oil Company of New York with capital stocks of $3,000,000 and $5,000,000 respectively, subsequently raised to $10,000,000 and $15,000,000. By 1888 the trust had interests in the following oil corporations:

	CAPITAL STOCK	STANDARD OIL TRUST OWNERSHIP
NEW YORK STATE:		
Acme Oil Company, manufacturers of petroleum products	$ 300,000	Entire
Atlas Refining Company, manufacturers of petroleum products	200,000	Entire
American Wick Manufacturing Company, manufacturers of lamp wicks	25,000	Entire
Bush & Denslow Manufacturing Company, manufacturers of petroleum products	300,000	50%
Chesebrough Manufacturing Company, manufacturers of petroleum	500,000	2661-5000
Central Refining Company (Limited), manufacturers of petroleum products	200,000	1-67.2%
Devoe Manufacturing Company, packers, manufacturers of petroleum	300,000	Entire

Empire Refining Company (Limited), manufacturers of petroleum products	$ 100,000	80%
Oswego Manufacturing Company, manufacturers of wood cases	100,000	Entire
Pratt Manufacturing Company, manufacturers of petroleum products	500,000	Entire
Standard Oil Company of New York, manufacturers of petroleum products	5,000,000	Entire
Sone & Fleming Manufacturing Company (Limited) manufacturers of petroleum products	250,000	Entire
Thompson & Bedford Company (Limited), manufacturers of petroleum products	250,000	80%
Vacuum Oil Company, manufacturers of petroleum products	25,000	75%
NEW JERSEY:		
Eagle Oil Company, manufacturers of petroleum products	350,000	Entire
McKirgan Oil Company, jobbers of petroleum products	75,000	Entire
Standard Oil Company of New Jersey, manufacturers of petroleum products	3,000,000	Entire
PENNSYLVANIA:		
Acme Oil Company, manufacturers of petroleum products	300,000	Entire
Atlantic Refining Company, manufacturers of petroleum products	400,000	Entire
Galena Oil Works (Limited), manufacturers of petroleum products	150,000	86¼%
Imperial Refining Company (Limited), manufacturers of petroleum products	300,000	Entire
Producers' Consolidated Land and Petroleum Company, producers of crude oil	1,000,000	65/132
National Transit Company, transporters of crude oil	25,455,200	94%
Standard Oil Company, manufacturers of petroleum products	400,000	Entire
Signal Oil Works (Limited), manufacturers of petroleum products	100,000	38¼%
OHIO:		
Consolidated Tank-Line Company, jobbers of petroleum products	1,000,000	57%
Inland Oil Company, jobbers of petroleum products	50,000	50%
Standard Oil Company, manufacturers of petroleum products	3,500,000	Entire
Solar Refining Company, manufacturers of petroleum products	500,000	Entire
KENTUCKY:		
Standard Oil Company, jobbers of petroleum products	600,000	Entire
MARYLAND:		
Baltimore United Oil Company, manufacturers of petroleum products	600,000	5,059–6,000
WEST VIRGINIA:		
Camden Consolidated Oil Company, manufacturers of petroleum products	200,000	51%

MINNESOTA:		
Standard Oil Company, jobbers of petroleum products	$ 100,000	Entire
MISSOURI:		
Waters-Pierce Oil Company, jobbers of petroleum products	400,000	50%
MASSACHUSETTS:		
Beacon Oil Company, jobbers of petroleum products	100,000	Entire
Maverick Oil Company, jobbers of petroleum products	100,000	Entire
MAINE:		
Portland Kerosene Oil Company, jobbers of petroleum products	200,000	Entire
IOWA:		
Standard Oil Company, jobbers of petroleum products	600,000	60%
Continental Oil Company, jobbers of petroleum products	300,000	62½%

It is to be noted that many of those corporations were combinations of several business enterprises, just as it was shown above that the Standard Oil Company of Ohio, within two years of its organization, was in control of some forty different plants, previously competitors.

In 1892 the Supreme Court of Ohio declared this trust agreement void. Apparent dissolution of the trust followed, but the dissolution amounted to transfer of stock held in some sixty-four companies controlled by the trust to the remaining twenty companies. The nine trustees and immediate members of their families still owned together enough stock to maintan control as effectively as before this "dissolution." Contempt proceedings were instituted in 1897 by the attorney-general of Ohio—on the claim that the trust had not been dissolved according to the court decree, and proceedings were also begun to forfeit the charter of the Buckeye Pipe Line Company on the ground that it was connected with the illegal trust. The complicated situation, developed by the partial dissolution, and these further attacks led to a new form of organization whch opens the third and last period of the story.

In January, 1899, the charter of the Standard Oil Company of New Jersey was so amended as to give it sweeping powers of a holding company The capital stock of this company which had been since 1892 $10,000,000, was raised to $110,000,000 and the trustees of the Ohio trust continued to be a majority of the board of directors. The stock of the various corporations controlled by the trust was transferred to this Standard Oil Company of New Jersey, in return for certificates of its common stock to the amount of $97,250,000. Ten million dollars of the $110,000,000 was preferred stock which was subsequently retired leaving the capitalization $100,000,000.*

In the new oil fields developed in California, southeastern Kansas, northern Indian Territory, and northern Oklahoma, the Standard built or acquired refineries and pipe lines which extended its control over the oil business of these fields.

When, in November, 1906, suit was filed in the Circuit Court of Missouri against the oil combination, the bill set forth that the Standard Oil Company of New Jersey, about seventy subsidiary corporations and seven individuals were engaged in a conspiracy to restrain and to monopolize commerce in petroleum and its products. In the Supreme Court decision of this case, in May, 1911, Mr. Chief Justice White thus summarized the charges of the bill as to various means employed by the Standard Oil Trust from 1882 to 1899 and by the Standard Oil Company of New Jersey since 1899, by which the combination sought to maintain its monopoly: "Rebates, preferences, and other discriminatory practices

*The actual outstanding capital stock of the Oil Combination ranged from $71,000,000 to $73,400,000 from 1882 to 1887; rose to $90,000,000 from 1887 to 1890; rose to $96,900,000 in 1890, and from 1891 to 1900 was $97,250,000. It rose slightly until 1904 since when it has remained to date $98,338,300.

On the outstanding stock at the respective dates the following dividends were paid:

1882, 4½ %; 1883-84, 6%; 1885-87, 10%; 1888, 11½%; 1889 to 1894, 12%; 1895, 17%; 1896, 31%; 1897, 33%; 1898, 30%; 1899, 33%; 1900-01, 48%; 1902, 45%; 1903, 44%; 1904, 46%; 1905 to 1910, 40%; 1911, 37%; 1912 to 1915 inclusive 20%.

in favor of the combination by railroad companies; restraint and monopolization by control of pipe lines; contracts with competitors in restraint of trade; unfair methods of competition, such as local price-cutting at the points where necessary to suppress competition; espionage of the business of competitors, the operation of bogus independent companies, and payment of rebates on oil, with the like intent; the division of the United States into districts and the limiting of the operations of the various subsidiary corporations as to such districts so that competition in the sale of petroleum products between such corporations had been entirely eliminated and destroyed; and finally reference was made to what was alleged to be the 'enormous and unreasonable profits' earned by the Standard Oil Trust and the Standard Oil Company as a result of the alleged monopoly; which presumably was averred as a means of reflexly inferring the scope and power acquired by the alleged combination."*

The decree† ordering the dissolution of the company was followed by the Standard Oil Company of New Jersey, which, in a letter of July 28, 1911, to its stockholders notified them that it was required "to distribute or cause to be distributed‡, ratably, to its stockholders the shares of stock of the following corporations, which it owns directly or through its ownership of stock of the National Transit Company, to wit: Anglo-American Oil Company, Limited; The Atlantic Refining Company; Borne-Scrymser Company; The Buckeye Pipe Line Company; Chesebrough Manufacturing Company, Consolidated; Colonial Oil Company; Continental

*221 U. S. 42, 48.

†See pp. 297 for statement of this case and decision.

‡In the process of the dissolution the stocks of thirty-three subsidiary companies were distributed to the shareholders of the Standard Oil Company of New Jersey on December 1, 1911. This resulted in some complicated applications of arithmetic fractions. For example $\frac{222}{1111}$ of a share in the Swan and Finch Company (with a face value of ten cents) and $\frac{111}{1111}$ of a share in the Ohio Oil Company (face value $15.25) were distributed to each share in the Standard Oil Co. of New Jersey.

Oil Company; The Crescent Pipe Line Company; Cumberland Pipe Line Company, Incorporated; The Eureka Pipe Line Company; Galena-Signal Oil Company; Indiana Pipe Line Company; National Transit Company; New York Transit Company; Northern Pipe Line Company; The Ohio Oil Company; The Prairie Oil and Gas Company; The Solar Refining Company; Southern Pipe Line Company; South Penn Oil Company; South West Pennsylvania Pipe Lines; Standard Oil Company (California); Standard Oil Company (Indiana); The Standard Oil Company (Kansas); Standard Oil Company (Kentucky); Standard Oil Company (Nebraska); Standard Oil Company of New York; The Standard Oil Company (Ohio); Swan & Finch Company; Union Tank Line Company; Vacuum Oil Company; Washington Oil Company; Waters-Pierce Oil Company.

"Such distribution will be made to the stockholders of the Standard Oil Company (of New Jersey) of record on the 1st day of September, 1911; and, for that purpose, the transfer books of the Company will be closed on the 31st day of August, 1911, at 3 o'clock P. M., and kept closed until the date when said stocks are ready for distribution, which it is expected will be about December 1, 1911.

"Notice of the date when said stocks are to be distributed and of the reopening of the books will be duly given."*

In accordance with this court decree, the combination was separated into thirty-eight companies which are not to have common officers or directors. There is much common ownership of the shares of these companies, making possible a working understanding to common ends.

The actual monopolistic power achieved by the Oil Combination is stated in the reports of the Bureau of Corporations on the Petroleum Industry,† covering data for 1904

*Stevens, W. S., *Industrial Combinations and Trusts*, pp. 462-463.

†Report of the Commissioner of Corporations on the Petroleum Industry, 1907.

and 1905 before this monopoly power had been attacked in the Federal courts. Only about a sixth of the crude oil came in 1905 from wells owned by the Standard Oil Company, but this company had an almost complete monopoly of the pipe lines. In the Appalachian, the Lima-Indiana, the Illinois and the Mid-Continent fields, rich in oil for illuminants, the Standard Company handled from 84 per cent. to 96 per cent. of the pipe line business. Railway rates are higher than pipe line rates, so that control of the pipe lines gave control of the crude oil supply to refineries. In 1904 the Standard Company refined almost 87 per cent. of the illuminating oil of the United States and handled the same high percentage of oil exported.

The Standard's system of highly efficient distribution gives it great marketing advantages. Not only has it pipe lines and tank cars and local storage plants, but its tank wagons do away with even the jobber and deal directly with the retailer and the final consumer. About 5,000 of the tank wagons carried the oil to the country stores. Nearly nine-tenths of the illuminating oil marketed in the United States was sold in 1904 and 1905 by the Standard Oil Company.

While such questionable practices as cited above from the court bill enabled the oil combination, particularly in its earlier days, to secure and to maintain its monopoly position, the high efficiency of organization, both on the manufacturing and the marketing sides of the business, the perfected utilization of by-products, the general cost-cheapening advantages that come to large scale production, and the courageous and masterful handling of the great problems of foreign trade in petroleum and its products are leading factors which account for the power of this combination.

The Bureau of Corporations thus summarized its findings as to prices* and profits of the Standard Oil Company:

"(1) There has been a very marked increase in the margin

* For detailed treatement of oil prices see pp. 149 to 157.

between the price of crude oil and the prices of its leading finished products in the United States during the past ten years. This increase in margin is only in small part attributable to increase in costs of conducting the business. Although since the time when the Standard Oil Company first secured a large proportion of the business, about 1874, there has been a material decrease in the margin between the price of crude oil and the price of illuminating oil, the Standard Oil Company can claim no credit for this decrease. The margin of the domestic trade is greater to-day than it would be under free competition.

"(2) The Standard has sold illuminating oil and other petroleum products in the foreign trade much cheaper than in the domestic trade, the difference having been inordinately great since 1902. The American consumer has been taxed in order to maintain the supremacy of the company in foreign trade.

"(3) The Standard discriminates greatly in fixing prices in different sections and in different towns, charging extortionate prices where there is no competition and cutting prices sharply where competition is active. In some cases net prices in one locality in a single state, after deducting freight, have been almost double the net prices in another locality in that state.

"(4) The profits of the Standard Oil Company, particularly on its domestic business, are altogether excessive, and they have been higher during recent years than formerly.

"(5) The real source of the Standard's power is not found in the rendering of superior service to the public, but in the long-continued use of unfair methods of competition. It has, indeed, superior industrial efficiency, but it does not share with the public the benefits thereof.

"(6) The Standard, by reason of its influence as a large shipper, as well as by its general financial power, is able to

secure excessive prices for lubricating oils from most of the railroads of the country, and maintains a practical monopoly in the sale of such lubricants."*

2. AMERICAN SUGAR REFINING COMPANY†

COMPETITION in the refining of sugar in the United States was very severe from 1884 to 1887. The margin between the prices of refined and of raw sugar was only .923 cent in 1884, .712 in 1885, .781 in 1886, and .768 in 1887. Eighteen out of forty refineries failed. In 1887 seventeen refineries were united into a trust known as the Sugar Refineries Company. A number of the refineries which entered the trust were closed. The margin was raised to 1.258 in 1888 and 1.207 in 1889. Testimony before the Industrial Commission indicates that a margin of about .60 would cover the cost of refining, including the loss in weight. Experienced sugar manufacturers estimated that the trust by economies, especially those of continuously operated plants, could refine sugar at from three to five cents a hundred pounds more cheaply than could independent refineries. Margins of .70 to .80 would be profitable for refiners. So the margins of 1888 and 1889 were hugely profitable and the result was that the great Spreckles refinery entered the business in 1889, followed by the Mollenhauer refinery in 1890. Price-cutting followed reducing the margins to .72 in 1890 and .828 in 1891. In the latter part of 1891 this competition was ended by the trust buying up the Spreckles refinery. The margin was raised to 1.10, which, as Mr. Havemeyer testified, "is the usual margin we had laid out as necessary for the benefit of the stockholders and proper conduct of the business.

*Report on the Petroleum Industry, Part II, pp. 1 and 2 (1907.)

†This story of the American Sugar Refining Company has been compiled from Volume I of the Industrial Commission Report, from Moody's and Poor's *Manual of Industrials* and from Willett and Gray's *Trade Journal*. See pp. 125 to 141, of this volume for detailed treatment of price making by the Sugar Trust.

The New York State Courts attacked the trust in 1890 with the result that a New Jersey corporation, the American Sugar Refining Company, with a capital of $50,000,000, was organized in 1891 to take over the trust plants. At the time of organization the corporation controlled about 75 per cent. of the cane sugar refining in the United States. Shortly after its organization the Spreckles refinery was purchased and the combination then controlled about 90 per cent. of the cane sugar refining.

There was no further serious competition in price-making until the establishment of the Arbuckle and Doscher refineries in 1898. Between 1892 and 1898 the margin had run between 1.153 in 1893 as high, and .882 in 1895 as low. The two new refineries entered into a bitterly fought competition with the trust, meeting its price cuts and even cutting under its prices. The margins ran as low as .32, far below the cost of refining. The Arbuckle firm took the position that if the trust, supplying nearly 90 per cent. of the sugar to the United States market, could stand the losses on their huge output, the smaller new companies should be able to stand their smaller losses. The war was continued with more or less violence until 1901, since when a truce has obtained.

After the Arbuckle war was ended the margin between refined and raw sugar prices was moved up to about 1.00 until 1905, since when it has declined. Since 1905 the following are the margins: 1906—.829; 1907—.983; 1908—.884; 1909—.758; 1910—.784; 1911—.892; 1912—.879; 1913—.772; 1914—.869; 1915—.917. It is notable that aside from the war year 1915, the margin has been appreciably below .90 ever since 1905, the average for the nine years 1906 to 1913 inclusive being about .84. The two periods of prolonged costly price-cutting due to the Spreckles and the Arbuckle-Doscher conflicts, seem to have taught this combination the wisdom of producing at a moderate margin, low enough to offer scant

inducement to new fighting rivals and yet high enough to afford goodly profits.

The dividends paid since the organization of the American Sugar Refining Company evidence the profitableness of the average business. Since the year of organization the 7 per cent. dividend has been regularly paid on the preferred stock. The common stock dividends have been: 1891, 8 per cent.; 1892, 9 per cent.; 1893, 22 per cent.; 1894 to 1899 inclusive, 12 per cent; 1900, 6½ per cent., and 1901 to 1916 inclusive, 7 per cent. Earnings on common stock have, however, varied greatly, as will appear in the figures since 1908. Common stock earnings are recorded: 1909, 14.2 per cent.; 1910, 5.38 per cent.; 1911, 18.92 per cent.; 1912, 5.34 per cent.; 1913, *nil;* 1914, 4.82 per cent., and 1915, 4.99 per cent. During the lean years the dividends on common stock have been kept up by drawing steadily upon the surplus, which had been reduced by December 31, 1915, to $16,328,802.

The capitalization of the company since 1901 has been $90,000,000, $45,000,000 of 7 per cent. cumulative preferred stock and $45,000,000 of common stock. The corporation has no outstanding bonds.

In 1915, of twenty-one cane sugar refineries in the United States, the trust owned seven with six of these in active operation. Of sixty-four beet sugar factories in the United States with a daily slicing capacity of 65,000 tons of beets, the trust has interest in twenty-three factories with a daily slicing capacity of 29,000 tons. In 1914 it sold out its entire holdings in the Utah, the Idaho, the Amalgamated and the Lewiston Sugar companies. During the earlier years of this combination's history, it refined from 80 to 90 per cent. of the sugar refined in the United States, but since the advent of the beet sugar companies, and particularly since the more rigid prosecutions under the anti-trust laws, the proportion has lessened until it was estimated to be not appreciably

more than 60 per cent. in 1910, including fair allowance for its shareholding in the smaller companies. According to the *Sugar Trade Journal* its proportion of the entire output has been since 1906 as follows:

YEAR	PERCENTAGE	YEAR	PERCENTAGE
1906	51.03	1912	38.48
1907	49.27	1913	36.27
1908	45.14	1914	35.47
1909	43.14	1915	34.06
1910	42.14	1916	38.64
1911	42.12		

A notable subsidiary of the American Sugar Refining Company is the Brooklyn Cooperage Company, a New York corporation, with cooper shops and storehouses in Boston, Brooklyn, Philadelphia, New Orleans, and Port Chalmette, La. This cooperage company, to insure needful supply of raw material, owned in 1915, 50,000 acres of timber land in New York State, with stumpage rights on 115,000 acres more. It owned 70,000 acres of timber in Arkansas and 90,000 acres in Missouri and controlled 60,000 acres in Pennsylvania. It also owned and operated seven stave and heading mills and 130 miles of logging railroads.

November 28, 1910, a petition was filed in the Circuit Court, S. D. of New York against this sugar combination, alleging that it was a combination in restraint of trade in the manufacture and sale of sugar and praying for its dissolution.

Three years were given to the taking of testimony and the case was ready for trial when the court ordered that the hearing be postponed awaiting the decisions of the Supreme Court in the Harvester and Steel cases.

In the Louisiana district courts there are some 200 suits which were filed against the Sugar Combination in 1914 by planters and sugar manufacturers. These cases demand in total sum more than $150,000,000 damages for alleged violations of the Sherman Act. In 1916 these cases had not advanced beyond the preliminary hearings.

In May, 1915, the Supreme Court of Louisiana decided in favor of the Sugar Combination a suit brought, in the name of the state, asking that the company be ousted from the state. A second ouster suit brought by the state is pending.

In 1915 a special session of the Louisiana Legislature passed a statute to constitute the business of refining sugar a public utility and to compel the payment of an arbitrary price, above the price prevailing in the Louisiana open market, to Louisiana planters for their raw sugar. This statute was unanimously declared unconstitutional by three judges of the Federal District Court in January, 1916, and their decision was confirmed April 20, 1916, by the United States Supreme Court. These citations serve to show that the way of the trust before the courts and under the laws of this goodly land is hard.

The American Sugar Refining Company has paid heavy fines for securing, through collusion of officers of the company with Federal customs employees, short weights as basis for paying duties on imported sugar and for receiving excessive drawbacks on exported syrup. The recovery by the government on the former item was above $1,800,000, and in the drawback case it was $700,000. The company has also been convicted and fined for taking rebates from railways.

3. AMERICAN TOBACCO COMPANY*

THE outline story of this trust falls naturally into four periods: (1) The period of beginnings of combination culminating in 1890 with the formation of the old American

*This story is compiled from the opinion of the U. S. Supreme Court in the *United States v. American Tobacco Company* (221 U. S. 106), from the *Report of the Bureau of Corporations on the Tobacco Industry*, and from Moody's and Poor's *Manuals of Industrials*.

Tobacco Company; (2) From 1890 to the formation of the Continental Company in 1898; (3) From 1898 to 1904, when the new American Tobacco Company was launched; (4) From 1904 to the present.

Prior to the forming of the first consolidation in the tobacco business of America, competition had been very active. Tobacco was grown in many sections of the country, and because of variant climate, soil, and seasonal conditions, it varied greatly in quality. The wide diversity of uses of tobacco in manufacture created demand for all qualities of it grown, a demand that was not confined to the growing districts, but was national and even international. With many scattered manufacturers and traders in this field, the competitive conditions were unusually alive and made a warfare characterized by those who were taking part in it as fierce and abnormal. Largely moved by desire to avoid the fighting costs of their cutthroat competition, five of the largest concerns in the business, which together were manufacturing and distributing in the United States and abroad 95 per cent. of all the domestic cigarettes but less than 8 per cent. of the smoking tobacco produced in the United States, combined. In January, 1890, the American Tobacco Company, with a capital stock of $25,000,000, came into possession of all of the assets, including the good-will and right to use the names of the combining firms, of Allen and Ginter, with factory at Richmond, Va.; W. Duke, Sons & Co., with factories at Durham, North Carolina, and New York City; Kinney Tobacco Co., with factory at New York City; W. S. Kimball and Company, with a factory at Rochester, N. Y.; and Goodwin and Company, with a factory at Brooklyn, N. Y. The $25,000,000 capitalization allotted by agreement among these five companies was considerably in excess of the summed market values of the respective companies before consolidation.

Soon after the consolidation the old Goodwin and Company Brooklyn factory was closed and all manufacture of tobacco and cigarettes was concentrated at Richmond.

In the first year of its operation this new corporation manufactured nearly 97 per cent. of the domestic cigarettes, about two and a half billion cigarettes in all, and manufactured about 5,500,000 pounds of smoking tobacco out of a total domestic product of nearly 70,000,000 pounds.

During the next eight years the new combination widened its control over the tobacco business by establishing, or buying in, plants manufacturing little cigars, fine cut and plug tobacco, and snuff. The general methods are indicated by the activities in the year 1891.

The capital stock of the company was first increased by $10,000,000, evidently to give treasury stock for use in extending control over other plants. In February, 1891, the National Tobacco Works, a Kentucky corporation which had been formed in January 1891, to carry on the business of Pfingsts, Doerhoefers and Company, experienced and successful manufacturers and dealers in plug tobacco, was taken over by the American Tobacco Company. For the $400,000 capital stock of this company, the American company paid $600,000 cash and $1,200,000 in stock of the American Tobacco Company. The members of the previously existing firm contracted to enter the service of the American Tobacco Company, and each member of the old firm bound himself not to engage, for a period of ten years, directly or indirectly, in any form, in the tobacco business as a competitor of the American Tobacco Company, nor even to permit the use of his name in any such connection.

In April, 1891, the business of Philip Whitlock of Richmond, Virginia, a manufacturer of cheroots and cigars, was bought, with exclusive right to use the name of Whitlock. Whitlock became an employee of the American and agreed

not to engage, independently, in the tobacco business for twenty years.

In this same month a Baltimore firm, Marburg Brothers, manufacturing and selling principally smoking tobacco and snuff, was bought for cash and stock in the American Company, and the members of this firm also bound themselves not to compete for many years. Also in this same month another old Baltimore firm, G. W. Gail and Ax, engaged principally in making and selling smoking tobacco, was bought under agreements similar to those stated above. Seventy-seven thousand five hundred and eighty-two dollars and sixty-six cents cash and stock in the American Company amounting to $1,760,000 was paid for this company, and its plant was very soon abandoned.

By such purchases the American Company, by the end of 1891, had become a factor in all branches of the Tobacco business, though its share as yet, in smoking tobacco, was not large, and in the fine cut and plug tobacco and in the snuff lines its share was very small, when the whole business in the United States is considered. The following table shows this:

THE OUTPUT OF THE AMERICAN TOBACCO COMPANY FOR 1891

	NUMBER	POUNDS
Cigarettes	2,788,778,000	
Cheroots and little cigars	40,009,000	
Smoking		13,813,355
Fine cut		560,633
Snuff		383,162
Plug		4,442,774

TOTAL OUTPUT FOR THE UNITED STATES, 1891

Cigarettes	3,137,318,596	
Smoking		76,708,300
Fine cut		16,968,870
Plug and twist		166,177,915
Snuff		10,674,241

Including the above purchases, the American Company, between February, 1891, and October, 1898, acquired fifteen

going concerns in the tobacco business in the States of Kentucky, Louisiana, Maryland, Michigan, Missouri, New York, North Carolina, and Virginia. For ten of these plants the consideration was all cash, totalling $6,410,235.26. For the remaining five, payments totalled $1,115,100.95 in cash and $4,123,000 in stock.

The last of these firms purchased was the Drummond Tobacco Company of Missouri, dealers in plug tobacco principally. This purchase, for a cash consideration of $3,457,000 fairly completed the campaign of the American Company for control of the plug tobacco business of the United States. Purchases of plug tobacco firms began in 1891. In 1893 the American Tobacco Company tried to bring about a combination of the leading manufacturers of plug tobacco. When this plan failed cutthroat competition followed in the plug tobacco field, lowering the price below cost of production. This ugly warfare was won by the trust through its superior financial strength and the wider range of its business although by the end of the war, in 1898, the losses entailed on the American Company totalled more than $4,000,000. Through this warfare the American Company gained control of important plug tobacco companies and brought the others to terms.

As a conclusion of this war the American Tobacco Company organized in connection with several leading plug manufacturers a New Jersey corporation, the Continental Tobacco Company, with a capital of $75,000,000, afterward raised to $100,000,000. Five large and successful plug tobacco manufacturers, P. J. Sorg and Co., John Finger and Bros., Daniel Scotten and Co., P. H. Mayo and Bros., and John Wright Co. turned over their plants and assets to the Continental Company in exchange for cash and stock. The American Tobacco Company also turned over to this new corporation, at large valuations, all of its plug tobacco business,

including the National Tobacco Works, the James G. Butler Tobacco Co., the Drummond Tobacco Co., and the Brown Tobacco Co. As a consideration it received more than $1,100,000 in cash and $30,274,200 of stock in the Continental Company. Mr. Duke, president of the American Company, became president of the Continental Company.

As an example of method in this consolidation, the P. Lorillard Company was acquired by the Continental Company by payment of $6,000,000 stock for the $3,000,000 common stock of the Lorillard Company and by taking over $1,581,300 of the $2,000,000 preferred stock of the Lorillard Company in return for notes to a larger amount. Though the Lorillard Company thus passed virtually under control of the American Tobacco Company, through the latter's ownership of stock in the Continental Company, the Lorillard Company continued to do business under its own name and with its own old brands, just as if it were an independent concern.

As a further step in piling the capitalizations, the American Tobacco Company, after the organization of the Continental Company, increased its own capital from $35,000,000 to $70,000,000.

As a result of all these purchases and consolidations, the American Company in 1898 was manufacturing 86 per cent. of all the domestic cigarettes, 26 per cent. of all the smoking tobacco, 22 per cent. of all the plug tobacco, 51 per cent. of all the little cigars, 6 per cent. of all snuff and fine cut tobacco, and more than 2 per cent. of all cigars and cheroots.

In the third period from 1898 to 1904 either the American Company or the Continental Company bought and closed up some thirty competing corporations and partnerships engaged in the tobacco business, requiring in each case that the firm members bind themselves not again to compete for years. Control of many more going tobacco concerns with plants

scattered over the United States and Porto Rico was purchased under conditions similar to those used in the earlier acquisitions. Many of the concerns acquired had control, through stock ownership, of subsidiaries, and in many instances the acquired corporations and their subsidiaries were carried on as apparently independent competitors of the American Company although they were controlled or owned by it. Large sums of money, too, were paid in many instances for plants which were immediately closed.

During this period the American Tobacco Company still further widened its control by purchasing concerns auxiliary to the tobacco business, for examples, concerns engaged in the manufacture of packing boxes, of tin foil, and of licorice.

During this period the machinery of control was perfected by organizing five important corporations, later known in the Federal suit as "accessory defendants," viz., The American Snuff Company, the Conley Foil Company, the American Cigar Company, the MacAndrews and Forbes Company, and the American Stogie Company.

The American Snuff Company, a New Jersey corporation of 1900 with a capital of $25,000,000, united important snuff plants and gave the American Company dominance in this line in which it had only slight share even in 1898.

The Conley Foil Company produced for the American Company all of its foil which constituted the majority product of the United States.

The MacAndrews and Forbes Company consolidated the licorice business so thoroughly that they came to use more than 95 per cent. of the licorice root used in the United States.

The American Cigar and the American Stogie companies centralized these branches of manufacture so far as they were under control of the American Company.

The retail field was entered through control by the American Company of the United Cigar Stores Company.

Another of the important developments of this third period was the division of the Tobacco trade of the world by agreements with the great English combination, the Imperial Tobacco Company of Great Britain and Ireland. This great British consolidation had been formed in attempt to meet the competition of the American Company which had entered the British territory and was prosecuting its business there in its usual aggressive way. In September, 1902, the Imperial and American companies contracted that the Imperial Company should limit its business to the United Kingdom, except purchasing leaf tobacco in the United States, that the American Company should limit its business to the United States, its dependencies and Cuba, and that the British-American Company with a capital of 6,000,000 pounds sterling should be organized to take over the export business of both of these companies. The Imperial Company held one-third and the American Company two-thirds of the stock of the British-American Tobacco Company.

In June, 1901, the Consolidated Tobacco Company was organized as a holding company. Largely in exchange for bonds of this company substantially all the shares of common stock of the American and the Continental companies was secured.

After the Northern Securities case decision had endangered all holding companies, the tobacco interests in October, 1904, organized in New Jersey the new American Tobacco Company, with perpetual existence, capitalized at $180,000,000. Of this capital, $80,000,000 was in preferred stock, mainly without voting rights. The new company merged all the preceding constituents. By the method of stock distribution in effecting this merger, the same six men who had controlled the Consolidated holding company remained in control of the new solidifying corporation. The assets of all of the old companies passed to the American Tobacco Company

which continued to carry on the business until its dissolution was effected in conformity to the decree of the Supreme Court in 1911.

In this fourth period, after the formation of the merger company, the same methods were continued in furthering the monopolization of the tobacco business. Plants were bought only to be dismantled, their former operators covenanting not to enter the field again as competitors, and control of other plants was secured although they were afterward operated ostensibly as competitors.

That the combination held a monopolistic position in every branch of the tobacco manufacturing industry except that of cigars in 1904, and that it still further extended its monopolistic control after the formation of the merger corporation in 1904 is in clear evidence from the following table:

AMERICAN TOBACCO COMPANY'S PROPORTIONATE HOLDINGS IN THE UNITED STATES*

YEAR	PLUG	SMOKING	FINE CUT	SNUFF	CIGARETTES	LITTLE CIGARS	CIGARS
	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
1904	78.2	69.2	80.4	90.6	87.7	79.2	13.9
1905	80.7	68.7	81.7	93.8	84.7	78.3	13.3
1906	81.8	70.6	80.9	96.0	82.5	81.3	14.7
1907	80.5	72.4	81.4	95.7	81.7	90.8	14.5
1908	81.9	73.6	79.2	95.7	81.8	88.7	13.0
1909	83.3	75.3	80.1	96.1	83.6	89.0	13.1
1910	84.9	76.2	79.7	96.5	86.1	91.4	14.4

Dividends since the formation of the American Tobacco Company follow:

From 1905 to date regular 1½ per cent. quarterly on preferred stock.

From 1905 to June, 1911, regular 2½ per cent. quarterly on common stock. Owing to the decree of disintegration no dividends on common stock September and December, 1911,

*Report of Commission of Corporations on the Tobacco Industry, part III, p. 2.

and March, 1912. June, September, and December, 1912, 2½ per cent. each and since March, 1913, 5 per cent. quarterly. Extra dividends on common stock: 1905, 10 per cent.; 1906, 12½ per cent.; 1907, 15 per cent.; 1908, 22½ per cent.; 1909, 25 per cent.; 1910, 30 per cent.; March and June, 1911, 7½ per cent. each.

In May, 1911, the American Tobacco combination was declared unlawful by the Supreme Court. The case was remanded to the Circuit Court to work out a plan for dissolution which was put into effect from December, 1911.

Under this dissolution plan the manufacturing business of the combination was divided substantially as follows: The American Snuff Company was separated from the control of the combination and its business was divided into three parts, one remaining with the American Snuff Company, the other two parts being transferred to two new companies organized for this purpose, the Weyman-Bouton Co. and the George W. Helme Co. The R. J. Reynolds Tobacco Company, chiefly a manufacturer of plug tobacco, was reestablished as an independent company. Most of the remaining business of the combination relating to tobacco manufacture in the United States was divided among three large companies, the American Tobacco Company and two new corporations, the P. Lorillard Co. and the Liggett and Myers Tobacco Company. The business in tobacco and related products controlled, before the dissolution, by the American Tobacco Company is now separated into fourteen separate and independent companies, no one of them having any control over or interest in any other.

The ownership of the stock of the new companies was placed in the hands of the owners of the combination stock but preferred stock was given voting rights. This reduced the voting power of the twenty-nine chief stockholders from about 56 per cent. in the combination to about 35 per cent. in

the new companies, on the average, when the dissolution went into effect.

The leading propositions of the summary of results given by the Commissioner of Corporations report in 1915, as to *Prices, Costs, and Profits* in the Tobacco Industry, are so significant a statement of the policy and power of the tobacco combination before its dissolution, of the effects of the dissolution upon the business of the companies into which the combination was divided, and upon the business of other tobacco firms, that its inclusion here is justified. Lack of space forbids the inclusion of illustrations and tables, but the reader interested in the present status of trusts in the United States, the effects of the dissolution policy of the courts, the price and cost of production effects of combination is referred to this third volume of the Report of Commissioner of Corporations in the Tobacco Industry. Following are the thirty-nine summarizing propositions* of this, one of the most enlightening documents in recent trust literature:

"(1) That the Combination from 1902 to 1910 had a monopolistic position in each of the chief branches of the tobacco business, except in cigars, the minimum proportion of the annual output in the several branches ranging from two-thirds to more than five-sixths of the total output of the country, while in cigars the maximum proportion in any year was only one-sixth of the total.

"(2) That for the Combination high rates of profit have followed monopolistic control, the greater the degree of control the greater the rate.

"(3) That for most types of manufactured tobacco the Combination's rates of profit were ordinarily more than double those of its competitors, though for a few types it had no advantage.

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*Report of the Commissioner of Corporations on the Tobacco Industry, Part III (1915) pp. 2-29, *passim*.

"(4) That selling costs were materially reduced as the volume of the Combination's business increased.

"(5) That generally there were material decreases in advertising expenditures of the Combination after a controlling proportion of the total production had been secured.

"(6) That there was a large advance in the cost of leaf tobacco for the Combination from 1901 to 1910.

"(7) That during 1901 and 1902 the internal-revenue tax was reduced 6 cents per pound on manufactured tobacco, 42 cents per thousand on cigarettes, and 46 cents per thousand on little cigars, but the Combination made practically no change in the prices to the jobber, while the prices to the consumer also remained unchanged, so that the Combination profited by substantially the whole extent of the tax reduction, though it was presumably intended for the benefit of the consumer.

"(8) That in 1910 when the internal-revenue tax on manufactured tobacco was increased from six cents to eight cents per pound, on cigarettes from $1.08 to $1.25 per thousand, and on little cigars from $0.54 to $0.75 per thousand, the prices of certain products of the Combination were increased as much as the tax both to the jobber and the consumer, so that the burden was shifted to the consumer while for other products the prices to jobbers and consumers were not increased, so that the burden rested on the Combination.

"(9) That there were practically no changes in prices to the consumer for the Combination's principal brands of manufactured tobacco, cigarettes, and little cigars from 1901 to July, 1910.

"(10) That, while there were practically no changes in prices to the consumer from 1901 to July, 1910, for the Combination's principal brands, there were substantial increases in prices to jobbers, thus reducing the margins between these prices.

"(11) That the most profitable years of the Combination's existence were from 1903 to 1908—the period of low tax, moderate leaf costs, decreased advertising expenditures, and highly monopolistic control.

"(12) That the Combination for various types of classes of tobacco products developed one or two predominating brands, a policy which tended to promote concentration and economy in manufacture and afforded a greater protection against competition than a multiplicity of brands, but which, at the time of dissolution, presented difficulties in dividing the business.

"(13) That the several successor companies established in accordance with the plan of dissolution were much larger producers of tobacco products than any of the other companies.

"(14) That a comparison of the successor companies' combined proportion of the total output of the country in the various branches of the tobacco business in 1913 with those of the Combination in 1910 shows that the combined proportion of the successor companies was less in smoking and in fine cut; more in cigarettes and in snuff, and about the same in plug and little cigars.

"(15) That in most branches there was a more equal distribution of business among the successor companies in 1912 and 1913 than there was directly after the dissolution.

"(16) That, although there were no important changes in prices, the results for certain branches, particularly smoking and cigarettes, tend to show competition for business in 1912 and 1913 and an effort on the part of the several successor companies to fill in gaps in types of their business in which they were weak, though for certain other branches, particularly snuff, such competition had not been apparent.

"(17) That in the snuff branch each of the three successor companies has practically a monopoly in its respective type and to a large extent a distinct sales territory; that the branch

is characterized by unusually high profits and small advertising and selling costs.

"(18) That the cost of leaf tobacco used by the successor companies in 1912 and 1913 in the plug, fine-cut, and cigarette branches was less, while in the smoking, snuff, and little-cigar branches it was more, than the cost of that used by the Combination in 1900 and 1910.

"(19) That the factory costs, other than leaf, of the successor companies in 1912 and 1913 and of the Combination in 1909 and 1910 were not materially different.

"(20) That almost invariably marked increases or decreases in the volume of particular brands decidedly reduced or increased, respectively, factory costs other than leaf.

"(21) That increases in selling cost after the dissolution were general, resulting from the duplication of selling organization and increased overhead expense, due to the division of the business.

"(22) That there was a marked increase in the advertising expenditure of the successor companies as compared with that of the Combination.

"(23) That the aggregate amount of profit of the successor companies in 1913 was slightly less than that of the Combination in 1910 in spite of a larger volume of sales.

"(24) That the ratios of profit to net receipts less tax for the successor companies in 1913 were, in general, comparatively low in those branches or types in which competition for business was most pronounced, e. g., plug-cut smoking and domestic and blended cigarettes, and very high in those in which competition was slight, e. g., snuff.

"(25) That on the book value of the total investment, the earnings of the successor companies averaged 12.1 per cent. in 1912 and 11.3 per cent. in 1913, while the profit accruing to the holders of the common stock in respect to their interest was at a much higher rate.

"(26) That on the total cost of investment, assuming that the cost of investment of the successor companies at the date of dissolution was the same as that of the Combination in the corresponding branches of the business, the earnings of the successor companies averaged 14.6 in 1913. The earnings of the Combination for the corresponding business in 1908 were 17.9 per cent. and in 1910 about 17 per cent.

"(27) That there have been no material changes in prices to the jobbers since the dissolution of the Combination.

"(28) That for all principal brands of the successor companies there have been practically no changes in prices to the consumer since the dissolution of the Combination.

"(29) That the high profits taken in conjunction with the practically unchanged wholesale and retail prices of tobacco indicate that there has been but little competition in price, but this is explained in large part by the customary retail prices and other peculiar price-making conditions of the tobacco trade, including statutory provisions, which make it impracticable in most cases to increase the quantity sold at the customary price.

"(30) That for the principal brands of plug tobacco, the manufacturer's cost in 1913 was approximately 50 per cent. of the consumer's price, the internal-revenue tax 15 per cent., the manufacturer's profit 10 per cent., and the jobber's and retailer's margin 25 per cent.; that for the principal smoking and cigarette brands the manufacturer's cost in 1913 was approximately 45 per cent. of the consumer's price, the internal-revenue tax 20 per cent., the manufacturer's profits 10 per cent., and the jobber's and retailer's margin 25 per cent.; and that for a number of the snuff brands the manufacturer's cost in 1913 was approximately 35 per cent. of the consumer's price, the internal-revenue tax 15 per cent., the manufacturer's profit 20 per cent., and the jobber's and retailer's margin 30 per cent.

"(31) That for companies other than the Combination and successor companies there were marked decreases in the proportions of their collective output in the plug, smoking, snuff, cigarette, and little-cigar branches, from 1905 to 1913.

"(32) That compared with both the Combination and successor companies the manufacturing costs of the other companies covered by the investigation were extremely high in practically all branches.

"(33) That compared with either the Combination or the successor companies the selling costs per unit of product of other companies investigated were extremely high in all branches.

"(34) That the larger margins above manufacturing and selling costs of the Combination and successor companies enabled them in most branches to spend from three to five times as much per unit of product for advertising or competitive purposes as the other companies investigated and at the same time to obtain practically the same or even greater rates of profit.

"(35) That compared with the Combination and successor companies the other companies investigated made an exceedingly poor showing of profits and that there was a marked decrease in profits of these companies in navy plug and Turkish cigarettes since the dissolution of the Combination.

"(36) That among companies investigated other than the Combination and successor companies the operations of the larger ones were, as a rule, the most profitable; and, in the manufactured tobacco business, those doing a general tobacco manufacturing business usually were more prosperous than those manufacturing exclusively one class of product. The operations of certain small companies, however, having especially popular brands were also profitable.

"(37) That the companies other than the Combination and successor companies which were the most successful in

increasing their output were the ones that adopted the coupon advertising system, i. e., the method of giving coupons, which are redeemable in either cash or articles of merchandise, as an inducement for trade.

"(38) That the independent companies, like the Combination, did not generally reduce prices in 1901 and 1902, during which time the revenue tax was materially reduced.

"(39) That the independent companies, like the Combination, generally increased prices on smoking tobacco in 1910 to meet the increase in tax rate, and that the increase in price in most cases exceeded the increase in tax, but, like the Combination, they did not increase prices on plug, cigarettes, or cigars."

4. UNITED STATES STEEL CORPORATION*

THIS is by far the largest and in many ways the most important industrial combination yet formed.

It was organized February 23, 1901, in the first place with the nominal capital of $3,100, which was shortly thereafter increased to $1,100,000,000, of which authorized capital stock $550,000,000 was preferred and $550,000,000 common stock. The charter is drawn in the broad terms of the New Jersey charters, the special purpose named being the manufacture of iron, steel, and other materials, with the right to do practically everything else which can be brought into connection with that work.

To avoid some of the difficulties met with by earlier large corporations, it is provided that whenever all quarterly dividends accrued upon the preferred stock for previous quarters shall have been paid, the board of directors may declare dividends on the common stock out of any remaining surplus of net profits.

An act of the legislature of the State of New Jersey passed

*See pp. 157 to 180 for detailed treatment of prices under the United States Steel Corporation. See Chapter X, especially pp. 182 to 186, for treatment of employees by this Corporation.

March 22, 1901, was, it was supposed, passed at the instance of the promoters of this corporation, in order to enable them to manage the affairs of so great a body without being hampered by the possible difficulties of getting a large meeting of stockholders. The new provision of the law provides that "any action which theretofore required the consent of the holders of two-thirds of the stock, at any meeting after notice to them given, or required their consent in writing, to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy." Whether such a liberalizing provision would be safe in case of all corporations may perhaps be questioned.

In form this corporation resembles that of the Federal Steel Company already explained in Chapter VII. The United States Steel Corporation has bought the stock of its

NAME OF COMPANY AND CLASS OF STOCK ACQUIRED	TOTAL STOCK	U. S. STEEL STOCK RECEIVED PER SHARE	
		PFD. STOCK	COM. STOCK
Federal Steel Co., Pfd. stock	$ 53,260,900	$110.00	.....
Federal Steel Co., Com. stock	46,484,300	4.00	$107.50
National Tube Co., Pfd. stock	40,000,000	125.00	.....
National Tube Co., Com. stock	40,000,000	8.80	125.00
Amer. Steel & Wire Co., N. J., Pfd. stock	40,000,000	117.50	.....
Amer. Steel & Wire Co., N. J. Com. stock	50,000,000	.....	102.50
National Steel Co., Pfd. stock	27,000,000	125.00	.....
National Steel Co., Com. stock	32,000,000	.....	125.00
American Tin Plate Co., Pfd. stock	18,325,000	125.00	.....
American Tin Plate Co., Com. stock	28,000,000	20.00	125.00
American Steel Hoop Co., Pfd. stock	14,000,000	100.00	.....
American Steel Hoop Co., Com. stock	19,000,000	.....	100.00
American Sheet Steel Co., Pfd. stock	24,500,000	100.00	.....
American Sheet Steel Co., Com. stock	24,500,000	.....	100.00
American Bridge Co., Pfd. stock	30,527,800	110.00	.....
American Bridge Co., Com. stock	30,527,800	.....	105.00
Lake Superior Consolidated Iron Mines Co.	29,425,940	135.00	135.00
Shelby Steel Tube Co., Pfd. stock	5,000,000	87.50	.....
Shelby Steel Tube Co., Com. stock	8,151,500	.....	25.00
Carnegie Co., viz:			
For $64,000,000 of stock	.....	153.55	141.06
For $96,000,000 of stock there was issued $144,000,000 of United States Steel collateral trust bonds.			

different constituent companies, and controls these companies by virtue of being practically the single stockholder in each case. The rates at which the stock of the various constituent companies was exchanged for that of the United States Steel Corporation, together with the amounts of both kinds, appear in the accompanying table, p. 364.

In addition to the stocks named above, the corporation acquired a smaller interest in many other companies, parts of which had been owned by other companies, usually one of the steel corporation subsidiaries. Later, the corporation purchased a number of other companies of importance, such as the Clairton Steel Company, purchased in 1904, the Risdon Iron and Locomotive Works, San Francisco, purchased in 1911, and particularly the Tennessee Coal, Iron and Railroad Company, in which it secured a controlling interest in November, 1907.

In order that it may be certain of securing a proper supply of coal and coke, the corporation has likewise acquired large properties of this nature, especially the H. C. Frick Coke Company, and other large coal companies.

Aside from this, the company is the owner, either directly or through its subsidiaries, of very important iron ore mines in the Lake Superior ore region, as well as elsewhere.

As an illustration of the way in which it has been found desirable to extend its work into other fields, it may be mentioned that in 1906 the Universal Portland Cement Company was organized with a $1,000,000 authorized stock to develop the cement business of the corporation. The productive capacity of these plants at the present time amounts to between thirteen and fourteen million barrels per year.

It likewise owns or controls some thirty railroads, those which mostly contribute directly to its own work by carrying ore, coal, or other material between the different plants, or from the plants to the ship companies.

ASSETS

	1916	1915	1914	1913	1912
Property account	(a)$1,472,623,667	(a)$1,443,300,766	$1,457,853,930	$1,465,498,632	$1,448,175,255
Deferred charges to operations	1,618,063	1,805,949	1,784,936	7,455,381	7,149,673
Advanced min. royalties	18,678,087	17,909,716	17,266,831	.....	.....
Mining royalties against which notes of sub. cos. have been issued (contra)	24,925,557	25,955,479	26,976,001	.....	.....
Cash held by trustees on account of bond sinking funds (in 1916, $98,640,000 par value of redeemed bonds held by trustees not treated as an asset)	1,283,728	1,148,227	1,675,921	1,365,997	971,321
Investments, outside real estate, etc.	3,548,203	3,060,459	3,477,257	3,407,183	3,729,456
Ins. & deprec'n funds assets	(b) 48,206,307	13,562,854	9,412,438	15,614,792	14,130,620
Time Bank deposits and secured demand loans	40,869,794	.....	.....	.....	.....
Deposits with Trustee of Mortgages	5,189,940	.....	.....	.....	.....
Inventories	181,901,005	161,113,900	158,091,056	167,634,791	152,412,254
Accounts receivable	83,441,821	66,308,294	57,088,352	58,024,387	68,574,839
Bills receivable	5,146,806	6,766,818	8,880,007	7,866,696	6,895,569
Agents' Balances	1,059,103	934,020	1,034,764	1,039,574	903,195
Sundry stocks and bonds	40,337,583	7,748,059	2,012,133	2,241,276	1,836,420
Cash	148,394,761	94,083,805	61,963,287	66,951,010	67,153,564
Contingent fund and miscellaneous assets	5,803,550	4,843,515	4,716,600	3,486,604	3,567,943
Total Assets	$2,083,027,975	$1,848,541,861	$1,792,233,493	$1,800,586,323	$1,775,500,109

(a) After deducting depreciation and replacement fund, balances at Dec. 31, 1916, as follows: Balances in various funds, $138,596,098; general depreciation appropriated from income (invested as follows: In redeemed bonds held by Trustees in sinking funds, but not treated as assets, and in cash, $94,777,782; invested in retired bonds redeemed with sinking funds, $2,378,553), $97,156,335—total, $235,752,433.

(b) Includes insurance and depreciation funds assets and purchased bonds available for future bond sinking fund requirements (securities at cost, $55,729,353; cash, $10,249,065), $65,978,419; less $17,772,112, represented by obligations of subsidiary companies issued for capital expenditures made.

LIABILITIES

	1916	1915	1914	1913	1912
Common stock	$508,302,500	$508,302,500	$508,302,500	$508,302,500	$508,302,500
Preferred stock	360,281,100	360,281,100	360,281,100	360,281,100	360,281,100
Stocks of subsidiary cos. not owned	505,042	587,743	589,042	589,542	591,543
Bonded & Debenture Debt	(a) 603,471,027	(a) 616,432,706	627,045,112	627,097,377	643,129,932
Mortgages of sub. cos.	117,037	136,145	193,305	269,305	407,249
Sub. cos. pur. money obligations	148,842	176,609	907,938	9,596,504	410,000
Mining royalty notes of sub. cos.	636,411	763,693	5,390,975	.....	.....
Notes of sub. cos. substituted for min. royalty obligations (contra)	24,925,557	25,955,479	26,976,001	.....	.....
Current accts. payable and pay-rolls	41,065,936	53,064,499	17,690,377	27,508,292	31,578,306
Bills payable	.....	.....	.....	.....	14,296
Employees' Deposits, etc.	.....	992,187	999,510	988,481	902,810
Accrued taxes not due	22,171,541	9,930,945	8,602,304	8,900,501	6,767,095
Accrued int. & unpresented coupons	8,150,966	8,187,999	8,270,719	8,521,085	8,489,660
Pfd. dividend payable	6,304,919	6,304,919	6,304,919	6,304,919	6,304,919
Com. dividend payable	15,249,075	6,353,781	.....	6,353,781	6,353,781
Conting. & miscellaneous funds	34,363,059	17,223,399	13,873,805	13,456,423	11,570,424
Approp. for addns. & construction	55,000,000	55,000,000	55,000,000	55,000,000	40,000,000
Insurance funds	16,974,050	15,922,828	13,601,414	13,118,082	11,680,249
Pension fund	4,000,000	3,500,000	3,000,000	2,500,000	2,000,000
Undivided surplus of U. S. Steel Corporation & subsidiary cos.	381,360,913	180,025,329	135,204,472	151,798,429	136,716,245
Total Liabilities	$2,083,027,975	$1,848,541,861	$1,792,233,493	$1,800,586,323	$1,775,500,109

(a) In addition there are, $19,044,000 capital obligations of subsidiary companies authorized or created for capital expenditures made, held in treasury subject to sale, but not included in assets or liabilities.

Out of its funds it has also built large new steel manufacturing plants, especially at Gary, Indiana, the largest steel plant in the world. The tract contains about 9,000 acres, with some ten miles' frontage on Lake Michigan, and is immediately adjacent to five front lines of railways.

The best idea, perhaps, that one can obtain easily of the size and importance of the Steel Corporation's work is shown by giving the consolidated general balance-sheet of the Corporation and subsidiary companies of December 31, 1916.

The causes of the consolidation of the Steel Corporation were probably much the same as those of the other great consolidations. The Carnegie Company, besides making steel rails and the heavier kinds of steel, was planning to extend its field of operations into the manufacture of wire nails and similar products; while, on the other hand, the American Steel and Wire Company, the National Tube Company, and others, were finding it necessary to build their own furnaces for the production of iron ore and the basic steel for their more highly finished products. Moreover, several of these larger establishments had already purchased ore and coal properties and lake ore vessels so that they were rapidly becoming integrated companies which would no longer appear as purchasers of one another's products.

Again, from the financial viewpoint there were several important groups interested not only in these various manufacturing corporations, but also in the railroads, and a trade war among these large corporations would be certain to result in a depreciation of many of the securities and ultimately, quite probably, in the bankruptcy of some of them.

The movement toward consolidation in the years immediately preceding had been very rapid, and had been also apparently successful both as regards the profits that the companies were making and, what was perhaps of greater importance, as regards the real savings effected. Savings in

freight, in the better use of skilled executives, in the division of labor among the different plants, in the ability to close the more poorly situated plants concentrating the work to better advantage in those best situated—all these and other advantages were so apparent that consolidation of these many companies seemed a natural further step to take. By bringing together all of these companies there was doubtless more or less of a lessening of competition in some branches of the industry, although in no field did competition cease. Where it was least the Corporation controlled patents, giving it a legal monopoly. But probably of distinctly greater importance was the fact that through the integration of the various kinds of industries from the ore and coal mines to the highly finished products there was a greater opportunity of making savings than would otherwise have been possible.

At the beginning there was a large increase in stockholdings, and much was said with reference to the large amount of watered stock issued. In later years, it seems to be generally agreed that, owing in part to the increased demand for steel, which has affected vitally the value of the properties, but still more to the fact that the large amounts of ore and coal properties that had been secured have increased enormously in value, the actual cash value of the properties now held probably is equal to, or exceeds the value of the total capitalization.

The United States Government brought suit against the Steel Corporation in 1911. The case was tried in the district court of the United States for the district of New Jersey; and after the taking of voluminous evidence on both sides, and arguments by the ablest counsel, a decision was rendered (June 3, 1915) in favor of the Corporation. The most important point in the decision has to do with the question whether the size of a corporation or the percentage of its output in the market renders the combination illegal; or

whether the acts of the corporation itself as promotive of the public welfare, or antagonistic thereto, is to be considered the decisive point. On this point, the court, referring to the Standard Oil and Tobacco Companies cases previously decided, said:

"These cases may be taken to have established that only such combinations are within the Act (the Sherman Anti-Trust Act) as by reason of intent or the inherent nature of the contemplated acts prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade." And again: "It will be seen that this case is practically one of business facts. . . . It will be seen that in location, facilities, capital, and basic supplies they show such past, present, and prospective competition as affords just grounds for concluding that the steel and iron business of this country is not being, and indeed, cannot be monopolized, that the real test of monopoly is not the size of that which is acquired, but the trade power of that which is not acquired." And further: "We dismiss once and for all the question of the mere volume or bigness of business. The question before us is not how much business was done, or how large the company that did it, the vital question is: 'How was the business, whether big or little, done? Was it, in the test of the Supreme Court, done without prejudicing the public interests, by unduly restricting or unduly obstructing trade? The question is one of undue restriction or obstruction, and not one of undue volume of trade." These statements put the case squarely on the issues, not of verbal quibbles, or of legal technicalities, but of the public interest as shown by the actual facts.

The case was appealed by the government, and is now pending in the United States Supreme Court. Upon its decision depends not merely to a considerable degree the welfare of the Corporation itself, but what is of far greater importance,

the status of large industrial companies in the United States, presumably for many years to come. This case and that of the International Harvester Company seem to contain the necessary elements for settling definitely the position of the United States Supreme Court regarding the great corporations. When that issue is settled, the law will be known. If the Supreme Court sustains this decision of the lower court, business men may follow their consciences and fear no ill if they do not harm the community, competitors, dealers, or the public; and not only the courts, but public opinion will approve.

5. INTERNATIONAL HARVESTER COMPANY*

A PETITION was filed, April 30, 1912, in the District Court of Minnesota, against the International Harvester Company, alleging that it had acquired and maintained a monopoly, contrary to the Sherman Act, in harvesting and agricultural machinery and implements and twine. August 15, 1914, the court sustained the contentions of the government and decreed the dissolution of the combination. The case was appealed to the Supreme Court, where it has been argued and reargued and decision is now awaited.

This case is of particular interest because in the course of this trial as well as through the report of the Bureau of Corporations on the International Harvester Company, this combination is shown to be a "good" trust. The facts indicate that it is not over-capitalized, does not use clearly predatory methods of competition, does not sell abroad more cheaply than at home, is not in monopolistic control of basic patents, does not make exorbitant profits and does not charge excessive prices. Yet the District Court decreed its

*This story of the International Harvester Company has been compiled from the government and the Company briefs in hearings before the U. S. Supreme Court in October, 1914, from the U. S. Bureau of Corporations Report on The International Harvester Co. (1913) and from Moody's and Poor's *Manuals of Industrials*.

dissolution. Mere extent of control in an industry, if, in the court's judgment, it approximates monopoly, seems to insure dissolution decree under the Federal Anti-Trust Acts. If the Harvester combination be dissolved by the decree of the Supreme Court it will be clear, that as the law will then stand interpreted, approach toward monopoly will not be permitted in industry of the United States, regardless of the fair methods by which the monopoly may be approached and regardless of any advantages, such as cost-cheapening or bettered development of foreign trade, that may flow from the more centralized control. At least the central issue of the anti-trust fight in the United States will then be made clear.

A brief outline statement of the history of the Harvester combination is given by the United States Commissioner of Corporations, Luther Conant, Jr., in transmitting to the Secretary of the Department of Labor his report on "The International Harvester Co." That statement, which summarized the findings of this detailed 250-page report, is here given in full:*

"The International Harvester Company was organized in 1902 as a consolidation of the five principal manufacturers of harvesting machines in the United States, namely, the McCormick Harvesting Machine Co., Deering Harvester Co., Plano Manufacturing Co., the Warder, Bushnell & Glessner Co., and the Milwaukee Harvester Co. The companies thus consolidated had in 1902 about 90 per cent. of the total production of grain binders in the United States, and about 80 per cent. of the total production of mowers, the two chief kinds of harvesting machines. The principal outside makers of harvesting machines were located in New

*U. S. Bureau of Corporations Report on The International Harvester Co., (March 3, 1913) pp. XVII to XXIII inclusive.

York State, and their market was chiefly confined to the North Atlantic States and to the export trade.

"The interests included in the combination had previously been in keen competition. An attempt made in 1890 to establish a general consolidation of makers of harvesting machines was a failure, and from that time until the merger, competition was severe. In fact, it has been asserted that the combination was virtually forced by such competition. However, the two most important concerns, namely, the McCormick and Deering companies, were making large profits just prior to the merger, and two of the other companies merged were making at least fair profits. Obviously, therefore, it cannot be contended that this competition was destructive.

"It has been represented in formal testimony by officers of the company and its financial promoter, G. W. Perkins, then of the firm of J. P. Morgan & Co., that its organization was not the result of concerted action by the former competing owners, but merely of the purchase of their properties by new and outside interests. Documentary evidence gathered by the Bureau completely disposes of this contention and shows that the principal competing interests considered and discussed among themselves the formation of this combination and were active in bringing it about.

"The chief features of the International Harvester Co.'s operations are the substantial maintenance of its monopolistic position in the harvesting-machine business, originally acquired through combination, and its extensions on a large scale into new lines of the farm-machinery industry. The company has been able to do this in part through the acquisition of some of its chief rivals in the harvesting-machine business; in part by using its monopolistic advantage in these harvesting-machine lines to force the sale of its new lines; in part by certain objectionable competitive methods; and

especially through its exceptional command of capital, itself the result of combination.

Acquisitions of Competing Concerns

"Almost immediately after its organization the International Harvester Co. commenced the acquisition of competing makers of harvesting machines. In January, 1903, it secretly acquired control of D. M. Osborne & Co., of Auburn, N. Y., its chief competitor. This secret control was maintained for nearly two years, during which the Osborne Company was operated and advertised as an independent concern. Two of the chief stockholders of the Osborne company agreed to refrain from engaging independently in the same lines of business for a period of ten years. Again, the combination, between 1903 and 1904, acquired and secretly operated several other competing harvesting-machine concerns, namely, the Minnie Harvester Co., the Aultman-Miller Co., and the Keystone Co. In some cases it was contended that the concealment of ownership was employed to facilitate liquidation of certain accounts of the purchased concerns.

"Negotiations for the acquisition of several other harvesting-machine concerns were not consummated; in some cases the initiative came from the competitors.

Extensions into New Lines

"The company's acquisition of competitors in harvesting machines was followed by extension of its manufacture into numerous new lines, partly by the purchase of established concerns. Among the most important of such lines were tillage implements, manure spreaders, farm wagons, gasoline engines, tractors, and cream separators. The extension of the company into these lines was directly furthered by its substantially monopolistic control of the harvesting-machine

business. It is obvious that the possession of a monopolistic position in that important branch of the business afforded a powerful lever for forcing the sale of its new lines.

Competitive Methods

"The competitive methods employed by the company have been the subject of much complaint. Some of these complaints relate to practices which, like the use of the exclusive clause in agency contracts and the operation of purchased companies as independent, were at one time extensively practised, but which have since been abandoned. As above noted, some of these acquired concerns were openly advertised as independent.

"Among the most important complaints charged against the company in recent years is an effort to secure an undue proportion of local dealers in farm machinery by allotting, as a rule, only a single brand to any one dealer in the same place, thus tending to restrict the outlet for competitors' goods. The company's own records show that this was one purpose at least in making this distribution of its brands, and it appears to have had some practical effect in handicapping competition.

"Compulsion of dealers to take the company's 'new' lines by reason of its monopolistic control of harvesting machines ('full-line forcing') has been attempted with more or less success by the company's representatives. Attempts to secure the exclusive handling of certain lines of the company by similar methods were also reported to the Bureau.

"Special discriminatory prices and terms have been reported in a number of instances, but the general policy of the company is to maintain high prices in the monopolized lines; in the principal new lines, however, where considerable competition is encountered, unusually low prices and long terms have been generally employed.

"Another rather general complaint is that salesmen of the International Harvester Co. represent that purchasers of competing lines of harvesting machines will be unable to secure repair parts, a matter of much practical importance. Officers of the International Harvester Co. admit that this was at one time a common characteristic of competition in the harvesting-machine industry, but that the company is opposed to the practice and has used active efforts to eliminate it. The Bureau, however, received rather numerous complaints of this character.

"The company at one time openly attempted, through a clause in its commission contracts, to control the price paid for its machines by the farmer to the retail dealer. Since the elimination of this clause, 'suggested' retail price lists have been rather generally circulated by some of its branch offices, apparently for the purpose of indirectly maintaining the retail price, although the company contends that these lists are intended for the use of its employees in furnishing information to purchasers and professes to discourage their issuance to dealers. It is evident, however, that it could completely stop this practice if it really wished to.

Superior Resources

"The company's exceptional financial resources, including its connections with J. P. Morgan & Co. and John D. Rockefeller, constitute one of the chief sources of its power. They not only enable it to secure the economies of large-scale operations, which, as a rule, give it marked advantages in manufacturing costs, but also enable it to maintain a very elaborate selling organization, by virtue of the variety and extent of its business. Furthermore, they give it a great advantage in extending credits to purchasers, an exceedingly important feature of the farm-machinery industry. While apparently any such use of credits has not been a controlling factor in

restricting competition, it appears to have been felt to some extent in certain lines, and is one of the chief sources of complaint from manufacturers as distinct from dealers in farm machinery.

Present Position

"As a result of the developments and practices above described, the position of the combination has changed from that of a maker of harvesting machines only, until it is now an important factor in several other branches of the farm-machinery business. In manure spreaders it appears to have more than one-half of the business, and in disk harrows approximately 40 per cent.; and it is increasing its proportion in several other new lines, such as wagons and gasoline engines.

"New competition has, however, begun to appear, especially from certain large plow and tillage implement makers, whose fields have been invaded by the combination, and who likewise have arranged to establish a 'full line,' that is, a large assortment of the chief kinds of farm implements. This new competition is apparently of great significance. However, in 1911 the company still had about 86 per cent. of the production of binders, 78 per cent. of the production of mowers, and 72 per cent. of the production of rakes."*

*In its Reply Brief, p. 74a, before the U. S. Supreme Court, October 6, 1914, the Harvester Company gives the following percentages of its sales compared with total sales in the United States:

	GRAIN BINDERS	MOWERS	RAKES
1905	93.12	86.49	77.85
1906	90.61	82.26	75.71
1907	92.12	84.53	77.86
1908	91.09	82.98	74.21
1909	90.40	78.70	69.33
1910	88.37	76.05	68.45
1911	87.20	73.90	67.79
1912	85.04	72.98	Figures not completed

It is to be noted that these figures show the considerable growth of competing business even in these three leading lines of Harvester Company goods.

The Reply Brief further shows that in Binder Twine the Harvester Company

*Investment and Capitalization**

"The extraordinary over-capitalization which characterized most of the large industrial consolidations of the period 1898 to 1901 was absent in the case of the International Harvester Co. The original capital stock was $120,000,000. The 'cash stock' of $60,000,000 appears to have been paid up in full. The appraisal value of the plants, inventories, etc., for which the remaining $60,000,000 of stock was issued was $67,000,000; the Bureau places the value of these physical properties at, roughly, $49,000,000. The bankers and promoters received $3,700,000 stock for their expenses and services.

"It is worth noting that certain ore leaseholds acquired by the Deerings about seven months before the merger for $675,000, of which $500,000 was paid in notes, were valued for purposes of consolidation, after deduction of this indebtedness, at no less than $7,963,000. The price paid by the Deerings was rather more than the current average value of Mesabi leases at the time. It is claimed that during the period that the Deerings had owned these leases there had been some increase in the estimated tonnage of these ore properties, but no evidence was produced to indicate any great increase in their value. However, in order not to undervalue them, the Bureau arbitrarily allowed an increase of $500,000, and also added about $100,000 expended for improvements, etc. This is probably too liberal, but the resulting net valuation is more than $7,000,000 less than that claimed by the International Harvester Co. The high valu-

had from 42% to 54% of the domestic trade; in wagons it had but 15% of the domestic trade; in cream separators, only 16⅔%; in gasoline farm engines from 15% to 20%; and in manure spreaders about 50% of the domestic trade (pp. 74 to 77).

*In the Reply Brief (U. S. Supreme Court, October, 1914) the Harvester combination showed that, since its organization, $181,000,000 of new capital had come into the agricultural implement business in the United States, more than $76,000,000 of which was capital of corporations manufacturing and selling harvesting machines in competition with the International (p. 81).

ations placed on these ore properties caused much dissatisfaction among the combining interests themselves, especially on the part of the McCormicks. The banking interests back of the International Harvester Co., however, had only a few weeks earlier claimed an extravagant value for ore, in defending the capitalization of the United States Steel Corporation in important litigation then pending, and they were therefore in no position to deny excessive valuations for this Deering ore.

"In several other respects the appraisal valuations were clearly excessive. However, after deducting such excesses, the Bureau, as indicated, found that the value of the physical properties plus the working capital covered substantially 90 per cent. of the capital stock issued. The company claimed a large value for good-will, but has not entered any good-will value in its accounts. It is not unlikely that a fair valuation for good-will would have covered the difference between the original capitalization and the tangible assets.

"A much larger capitalization was at one time contemplated. For purposes of consolidation, the fixed properties, good-will, and inventories, exclusive of working capital, were nominally valued in the first instance at $132,000,000. This figure, however, was grossly excessive. Furthermore, the subsequent appraisal value of the physical properties (excluding good-will) of $67,000,000, above noted, was later written down to $60,000,000. In this connection it may be noted that inventories which were appraised at $25,550,000 were later reduced for 'trading purposes' to $18,155,000.

"In 1907 the capital stock was rearranged by making $60,000,000 a 7 per cent. preferred issue, leaving the common stock at $60,000,000. In 1910, $20,000,000 additional common stock was issued as a stock dividend, making the total capitalization $140,000,000.

"The stock of the company has been closely held by the

former interests. The McCormick and Deering families have throughout held a large majority of the total stock, while considerable amounts have also been retained by a few other stockholders. This fact assumes especial importance in view of the pending dissolution suit of the Government against the company.

"Recently, on account of this suit, the company has been split into two corporations, one of which, the International Harvester Co. of New Jersey, retains the old harvesting-machine plants and related business; the other, the International Harvester Corporation, takes over the new lines and foreign business. Each of these concerns is capitalized at $70,000,000. If this is intended as part of a plan for ultimate disintegration of the combination, in the opinion of the Bureau it is unsatisfactory.

Profits

"There has been a marked increase in the earnings of the International Harvester Co. From a distinctly low rate early in its organization they have risen to a rather high rate in recent years. For the entire period, 1902 to 1911, the average rate of net earnings on net assets, as computed by the Bureau (exclusive of good-will), is 8½ per cent. However, for the three years 1909 to 1911 the average was 12½ per cent. As computed by the company on capital stock and surplus, the average for the entire period is 7½ per cent., and for the years 1909 to 1911, 10½ per cent. The rate in 1911 was somewhat less than in 1909. Returns for 1912 are not yet available.*

"The increase in recent years is more significant because in certain of the new lines, which the company has been pushing aggressively, the rate of return is comparatively low. This means that the rate of return on some of the older mo-

*In connection with this report of the Bureau as to profits, it is interesting to note the dividends actually paid. In dividends this Harvester combination paid

nopolized lines has been very high. Thus, the rate of profit for grain and grass harvesting machines is very much higher than the rates for such lines as wagons, manure spreaders, and twine, where the company encounters a greater degree of competition. The rate of some of the new lines, however, has been liberal.

"Generally speaking, the prices obtained by the company on foreign sales are relatively higher than those in the domestic market, but claims made by the company that the net return is invariably greater were not sustained by its records; in some important instances at least the foreign nettings were lower than the domestic.

Conclusion

"It appears, therefore, that the International Harvester Co.'s position in the industry is chiefly attributable to a monopolistic combination in the harvesting-machine business, certain unfair competitive methods, and superior command of capital."

This summarization emphasizes in its very closing paragraph that "certain unfair competitive methods" are one of the chief reasons why the Harvester combination is dominant in its type of industry. This would seem to deny to it the appellation of a "good trust." Let it be noted, however:

(1) That the more detailed summary which follows this letter of transmittal closes thus:

"While its financial advantage has been supplemented by the adoption of certain objectionable competitive methods, the mainspring of its power was the consolidation of the leading competitive factors in the industry."*

3 per cent. on its $120,000,000 common stock in its first year and 4 per cent. the next three years. The preferred stock, introduced in 1907, has paid 7 per cent. annually ever since and the common stock 4 per cent. annually until April, 1911, and 5 per cent. since that time. Dividends are payable quarterly.

*U. S. Bureau of Corporations Report on the International Harvester Co., p. 87.

This fuller summary seems clearly to give a merely supplementary weight, at most, to the "objectionable competitive methods."

(2) That the main report shows that some of the alleged practices listed as "unfair competitive methods," notably the maintenance of pretended competitors, the contracts for exclusive handling of this corporation's goods, and the dictation of the retailers' selling prices, were merely historic and have not been policies of the corporation since its early years.

(3) Others of these listed "unfair competitive methods" were disavowed by the corporation's officials and characterized by them as mistaken methods used by unwise field agents of the corporation. For example, an assistant general manager of the Harvester Company is quoted at length as opposed to "full-line forcing." Among other things he states: "It is wrong in principle . . . we have repeatedly called in men and pointed out the absolute folly of trying to do business along that line. . . ."*

(4) Still other of the charges may fairly be questioned as "objectionable." For example, many complaints are recorded against the common practice, by the Harvester combination, of extending long-time credits. Quoting the Report: "One competitor alleges that in some cases the International Harvester Co., in selling its engines takes payment in rates maturing in the fall of four consecutive years, compared with 6, 9, and 12 months at longest for his concern. He said his own company cannot tie up its capital by allowing such long terms. . . . He stated that the prices of the International Harvester Company are pretty well maintained, but that the long credit extended by the company is attractive to some purchasers and gives it a great advantage."†

*U. S. Bureau of Corporations Report on the International Harvester Co., p. 309.
†Ibid., p. 323.

That is, the combination is here condemned by a competitor because it shares somewhat with final consumers its advantages over small competitors by reason of its great financial resources. This stands as a complaint, but, impartially considered, it surely cannot stand as an objectionable practice.

When allowance is made for these four points, presented in this very report, the weight of the charge of clearly unfair competitive methods as a charge for the past decade against this Harvester combination, approximates the negligible, and this Trust appears to have an almost perfectly clean record of conduct toward the public generally, its competitors and its stockholders.

In the Tobacco Trust case the court gave weight to the unfair competitive practices established against this Trust; in the Oil case, the court noted the full charges of unfair competitive practices and noted also the denials or explanations on the part of the trust representatives, but passed judgment without giving any weight to these accusations of bad competitive practice. In the Harvester case the industrial effectiveness of combination is in evidence, and almost no objectionable competitive practices stand against the combination. This case, if decree is given against the combination, will still more clearly than did the Oil decision, serve notice on the great industrial combinations of the United States that they are illegal and subject to dissolution by the court on the sole ground of their dominance in their industrial field and regardless of established records possibly wholly free from bad practices of any kind and possibly well filled with worthy service in terms of industrial progress.

APPENDIX E

STATE ANTI-TRUST LAWS IN THE UNITED STATES*

1. TEXAS
2. NEW JERSEY

1. TEXAS

Constitution

ART. I, SEC. 26. Perpetuities and monopolies are contrary to the genius of a free government and shall never be allowed.

ART. X, SEC. 5. No railroad or other corporation, or the lessees, purchasers, or managers of any railroad corporation, shall consolidate the stock, property, or franchises of such corporation with, or lease or purchase the works or franchises of or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

SEC. 6. No railroad company organized under the laws of this state shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other state or of the United States.

(Adopted, November 24, 1875.)

*For full text of all State Anti-Trust Laws and Constitutional Amendments, in force in 1914, the reader is referred to a government publication, *Laws on Trusts and Monopolies*, revised edition, 1914.

Statutes

That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes:

1. To create or which may tend to create or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this state.

2. To fix, maintain, increase, or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce, or commodities or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce, or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled, or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation, or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport, or to prepare for market, or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market

or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance or the preparation of any product for market or transportation, or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or purchase of any article or commodity or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

6. To regulate, fix, or limit the output of any article, or commodity which may be manufactured, mined, produced, or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business or from the purchase or sale of merchandise, produce, or commodities partially or entirely within the State of Texas, or any portion thereof.

SEC. 2. That a monopoly is a combination or consolidation of two or more corporations when affected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first section of this act.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the

physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

Sec. 3. That either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations, or associations of persons who are engaged in buying or selling any article of merchandise, produce, or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation, or association of persons any article of merchandise, produce, or commodity.

2. Where any two or more persons, firms, corporations, or associations of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation, or association of persons for buying from or selling to any other person, firm, corporation, or association of persons.

Sec. 4. Any and all trusts, monopolies, and conspiracies in restraint of trade as herein defined, are hereby prohibited and declared to be illegal.

Sec. 5. Any corporation holding a charter under the laws of the State of Texas, which shall violate any of the provisions of this act, shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

Sec. 6. For a violation of any of the provisions of this Act, or any anti-trust laws of this state, by any corporation, it shall be the duty of any judge or court to institute suit or quo warranto proceedings in Travis County or at the county seat of any county in the state which the attorney-general may select, for the forfeiture of its charter rights and franchises, and the dissolution of its corporate existence,

and for such purposes, venue is hereby given to each district court in the State of Texas. (As amended by Acts of 1909, p. 281.)

SEC. 7. When a corporation organized under the laws of this state shall have been convicted of a violation of any of the provisions of this act, and its charter and franchise has been forfeited, as provided in Section 5, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.

SEC. 8. Every foreign corporation violating any of the provisions of this act is hereby denied the right, and is prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proceedings in the district court of Travis County, in the name of the State of Texas.

SEC. 9. The provision of Chapter 92 of the Revised Statutes of this state of 1895, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this act.

SEC. 10. When any foreign corporation has been convicted of a violation of any of the provisions of this act, and its right to do business in this state has been forfeited, as provided in Section 8 of this act, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.

SEC. 11. Each and every firm, person, corporation, or association of persons, who shall in any manner violate the

provisions of this Act shall for each and every day that such violation shall be committed or continued, forfeit and pay a sum of not less than fifty nor more than fifteen hundred dollars, which may be recovered in the name of the State of Texas, in the district court of any county in the State of Texas, and venue is hereby given to such district courts; provided, that when any such suit shall have been filed in any county and jurisdiction thereof acquired, it shall not be transferred to any other county except upon change of venue allowed by the court, and it shall be the duty of the attorney-general, or the district or county attorney, under the direction of the attorney-general, to prosecute for the recovery of the same, and the fees of the district or county attorney for representing the state in all anti-trust proceedings, or for the collection of penalties for the violation of the anti-trust laws of this state, shall be 10 per cent. of the amount collected up to and including the sum of fifty thousand dollars, to be retained by him when collected, and all such fees which he may collect shall be over and above the fees allowed under the general fee bill; provided, that the provisions of this act as to the fees allowed the prosecuting attorney shall not apply to any case in which judgment has heretofore been rendered in any court nor to any moneys to be hereafter collected upon any such judgment heretofore rendered in any court, whether such judgment or judgments are pending upon appeal or otherwise; and provided, further, that the district or county attorney who joins in the institution or prosecution of any suit for the recovery of penalties for a violation of any of the anti-trust laws of this state, who shall, previous to the collection of such penalties, cease to hold office, he shall be entitled to an equal division with his successor of the fee collected in said cause, and in case of the employment of special counsel by any such district or county attorney, the contract so made shall be binding upon such

prosecuting officer making such contract and thereafter retiring from office; provided, further, that in case any suit is compromised any final judgment in the trial court is had, then the fees herein provided for shall be reduced one-half. (As amended by Acts of 1909, pp. 281-2.)

SEC. 12. Any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

SEC. 13. And in addition to all other penalties and forfeitures herein provided for, every person violating the provisions of this act shall be further punished by imprisonment in the penitentiary not less than two nor more than ten years.

SEC. 14. In prosecutions for the violation of any of the provisions of this act, evidence that any person has acted as the agent of a corporation in the transaction of its business in this state shall be received as prima facie proof that his act in the name, behalf, or interest of the corporation of which he was acting as the agent, was the act of the corporation.

SEC. 15. Upon the application of the attorney-general or of any of his assistants, or of any district or county attorney, acting under the direction of the attorney-general, made to any county judge, or any justice of the peace, in this state, stating that he has reason to believe that a witness, who is to be found in the county in which such county judge or justice of the peace is an officer, knows of a violation of any of the provisions of this act, it shall be the duty of the county judge, or of the justice of the peace, as the case may be, before whom such application is made, to have summoned and to have examined such witness in relation to violations of any of the provisions of this act, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn, and the county judge, or justice of the peace, as the case may be, shall cause the statements of the

witness to be reduced to writing and signed and sworn to before him, such sworn statement shall be delivered to the attorney-general, his assistants, or the district or county attorney, upon whose application the witness was summoned. Should the witness summoned as aforesaid fail to appear, or to make statements of the facts within his knowledge, under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person who shall testify before any county judge, or justice of the peace, as provided for in this act, or who shall testify as a witness for the state in the course of any statutory proceedings to secure testimony for the enforcement of this act, or in the course of any judicial proceeding to enforce the provisions of this act, shall not be subject to indictment or prosecution for any transaction, matter, or thing concerning which he shall so give evidence, documentary or otherwise.

SEC. 16. All actions authorized and brought under this act shall have precedence, on motion of the prosecuting attorney or the attorney-general, of all other business, civil and criminal, except criminal cases where the defendants are in jail.

SEC. 17. That all laws and parts of laws in conflict with this act be and the same are hereby repealed, and that Title CVIII of the Revised Civil Statutes of the State of Texas of 1895, and Arts. 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320, 5321, and 5321a thereof, be and the same are hereby expressly repealed; and that Arts. 976,977,978,979,980,981, 982, 983, 984, 985, 986, 987, 988, 988a, 988b, 988c, 988d, of c. 7, in Title XVIII, of the Penal Code of the State of Texas of 1895, be and the same are hereby expressly repealed; and

that an act entitled "An act to define trusts, provide for penalties and punishment of corporations, persons, firms, and associations of persons connected with them, and promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this act," approved April 30, 1895, and known and published as c. 83 of the General Laws of the Twenty-fourth Legislature, be and the same is hereby expressly repealed; and that an act entitled "An act to prohibit pools, trusts, monopolies, and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violate the terms of this act, and to authorize the institution and prosecution of suits therefor," approved May 25, 1899, and published and known as Chapter CXLVI of the General Laws of the Twenty-sixth Legislature, be and the same are hereby expressly repealed; and that an act entitled "An act to amend Art. 5318, Title 108, of the Revised Civil Statutes of the State of Texas, prescribing penalties against trusts and conspiracies against trade," approved June 5, 1899, and known as Chapter CLXXII of the General Laws of the Twenty-sixth Legislature, be and the same is hereby expressly repealed; provided nothing in this act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this state, for acts committed before this act takes effect.

SEC. 18.* If any person shall enter into an agreement or understanding of any character to form a trust, or to form a monopoly or to form a conspiracy in restraint of trade as these offences are defined by Chapter XCIV of the Acts of

*This Act from Section 18 to the end has been slightly edited to avoid the duplicate Section numbering and repetition of content, given in the law as printed both in the Federal compilation of State Anti-Trust Laws and in the General Laws as published by the Texas Legislature.

the Twenty-eighth Legislature, or shall form a trust, monopoly, or conspiracy in restraint of trade, or shall be a party to the formation of a trust, or monopoly, or conspiracy in restraint of trade, or shall become a party to a trust, or monopoly, or conspiracy in restraint of trade, or shall do any act in furtherance of, or aid to, such trust or monopoly or conspiracy in restraint of trade, he shall be punished by imprisonment in the penitentiary for a period of not less than two years, nor more than ten years. If any person shall, as a member, agent, employee, officer, director, or stockholder of any business, firm, corporation, or association of persons, form, in violation of the provisions of Chapter XCIV of the Acts of the Twenty-eighth Legislature, or shall operate in violation of the provisions of this act any such business, firm, corporation, or association formed in violation of Chapter XCIV of the Acts of the Twenty-eighth Legislature, or shall make any sale, or purchase, or any other contract, or do business for such business, firm, corporation or association, or shall do any other act which has the effect of violating or aiding in the violation of the provisions of Chapter XCIV of the Acts of the Twenty-eighth Legislature, or shall with the intent or purpose of driving out competition or for the purpose of financially injuring competitors sell within this state at less than cost of manufacture or production or sell in such a way or give away within this state products for the purpose of driving out competition or financially injuring competitors engaged in a similar business, or give secret rebates on such purchase for the purpose aforesaid, he shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years.

If any person shall outside of this state do anything which, if done within this state, would constitute the formation of a trust or monopoly or conspiracy in the restraint of trade as

defined by Chapter XCIV, p. 119, of the Acts of the Twenty-eighth Legislature, and shall cause or permit the trust or monopoly so formed by him to do business within this state, or shall cause or permit such trust, monopoly, or conspiracy in restraint of trade to have any operation or effect within this state, or if such trust, monopoly, or conspiracy in restraint of trade having been formed outside of said state, any person shall give effect to such trust, monopoly, or conspiracy in this state, or he shall do anything to help or aid it doing business in this state, or otherwise violate the anti-trust laws of this state, or if any person shall buy or sell or otherwise make contracts for or aid any business, firm, corporation, or association of persons, formed or operated in violation of the provisions of Chapter XCIV, p. 119, of the Acts of the Twenty-eighth Legislature, or so formed or operated as would be in violation of the laws of this state if it had been formed within this state, shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years.

If any person or employee or employees, or agent or agents, stockholder or stockholders, officer or officers of any person, firm, association of persons or corporation now doing business in this state, who have formed a trust as defined in Chapter XCIV, p. 119, of the Acts of the Twenty-eighth Legislature, or formed a monopoly as defined in Chapter XCIV, p. 119, of the Acts of the Twenty-eighth Legislature, or has formed a conspiracy in restraint of trade, as defined in Chapter XCIV, p. 119, of the Acts of the Twenty-eighth Legislature, or shall do or perform any act of any character to carry out such trust, monopoly, or conspiracy in restraint of trade, such person, employee or employees, agent or agents, stockholder or stockholders, officer or officers shall be punished by confinement in the penitentiary for not less than two years nor more than ten years.

SEC. 19. Criminal prosecutions under this act may be conducted in Travis County, Texas, or in any county in this state wherein a trust, monopoly, or conspiracy in restraint of trade is being carried on, a recovery or prosecution against any person for any violation of this act shall not bar a prosecution of or recovery against any other person or persons for the same offence.

SEC. 20. Prosecutions under this act may be instituted and prosecuted by any county or district attorney of this state, and when any such prosecutions have been instituted by any county or district attorney, such officer shall forthwith notify the attorney-general of such fact, and it is hereby made the duty of the attorney-general, when he shall receive such notice, to join such officer in such prosecution and do all in his power to secure the enforcement of this act.

SEC. 21. For every conviction obtained under the provision of this act, the state shall pay to the county or district attorney in such prosecution the sum of $250, and if both the county and district attorney shall serve together in such prosecutions, such fee shall be divided between them as follows: $100 to the county attorney and $150 to the district attorney.

SEC. 22. That this act shall not repeal, modify, or in any manner affect said Chapter XCIV, p. 119, of the Acts of the Twenty-eighth Legislature, or any section or provisions thereof, and this act is and is intended to be cumulative of said Chapter XCIV of the Acts of the Twenty-eighth Legislature of Texas.

(G. L. of 1903, 28th Legislature, Chapter XCIV, p. 119, as amended by G. L. of 1907, amending Sec. 13, p. 194; Secs. 15, 221; Secs. 18, 19, 20 and 21 added by G. L. of 1907, p. 322, and as amended by G. L. of 1907, p. 456; G. L. of 1909, p. 281.)

2. NEW JERSEY

Statutes

[Chapter 13, Laws of 1913]*

AN ACT to define trusts, and to provide for criminal penalties and punishment of corporations, firms, and persons, and to promote free competition in commerce and all classes of business, both intrastate business and interstate business, engaged in and carried on by or through any corporation, firm, or person.

1. A trust is a combination or agreement between corporations, firms or persons, any two or more of them, for the following purposes, and such trust is hereby declared to be illegal and indictable:

(1) To create or carry out restrictions in trade or to acquire a monopoly, either in intrastate or interstate business or commerce.

(2) To limit or reduce the production or increase the price of merchandise or of any commodity.

(3) To prevent competition in manufacturing, making, transporting, selling, and purchasing of merchandise, produce, or any commodity.

(4) To fix at any standard or figure, whereby its price to the public or consumer shall in any manner be controlled, any article or commodity or merchandise, produce, or commerce intended for sale, use, or consumption in this State or elsewhere.

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*This and the following six other New Jersey acts which follow are known as "The Seven Sisters." They constitute the body of stringent anti-trust legislation passed by New Jersey during Governor Wilson's administration. They reverse the long-established policy of this state to treat corporations as if they were individuals and to encourage their high development.

February 26, 1917, the New Jersey Legislative Commission reported in favor of the repeal of all but one of these "Seven Sisters" law. The leading reason given for this proposed repeal was that the Federal Clayton act embodies for all the states substantially the contents of these six New Jersey acts, which are therefore unnecessary. For the full text of the Acts passed and approved March 28, 1917, as a result of this Commission's report, see pp. 404 to 407.

(5) To make any agreement by which they directly or indirectly preclude a free and unrestricted competition among themselves, or any purchaser or consumers, in the sale or transportation of any article or commodity, either by pooling, withholding from the market, or selling at a fixed price, or in any other manner by which the price might be affected.

(6) To make any secret oral agreement or arrive at an understanding without express agreement by which they directly or indirectly preclude a free and unrestricted competition among themselves, or any purchaser or consumer, in the sale or transportation of any article, either by pooling, withholding from the market, or selling at a fixed price, or in any other manner by which the price might be affected.

2. Any person or corporation guilty of violating any of the provisions of this act shall be adjudged guilty of a misdemeanor, and punished accordingly on conviction.

3. Whenever an incorporated company shall be guilty of the violation of any of the provisions of this act, the offence shall be deemed to be also that of the individual directors, of such corporation, ordering or doing any of such prohibited acts and on conviction thereof they shall be punished accordingly.

4. In addition to the punishment which may be imposed for the misdemeanor the charter of the offending corporation may be revoked in appropriate proceedings by the Attorney-General of this State.

5. Nothing in this act contained shall operate to deprive any corporation of any right or power given or granted by Section forty-nine of the act entitled "An Act concerning corporations (Revision of 1896)," and the words "article" and "commodities" in this act are to be construed as synonymous with natural products, manufactured products, and goods, wares, and merchandise.

6. If any part or parts of this act shall be held to be in-

valid or unconstitutional the validity of the other parts hereof shall not thereby be affected or impaired.

Approved February 19, 1913.

[Chapter 14, Laws of 1913.]

A FURTHER SUPPLEMENT To an act entitled "An act concerning corporations (Revision of 1896)," approved April twenty-first, one thousand eight hundred and ninety-six, for the purpose of amending Section forty-nine thereof.

1. Section forty-nine of the act entitled "An act concerning corporations (Revision of 1896)," be and the same is hereby amended so as to read as follows:

49. (1) Any corporation formed under this act may purchase property, real and personal, and the stock of any corporation, necessary for its business, and issue stock to the amount of the value thereof in payment therefor, subject to the provisions hereinafter set forth, and the stock so issued shall be full paid stock, and not liable to any further call; and said corporation may also issue stock for the amount it actually pays for labor performed.

Provided, that when property is purchased the purchasing corporation must receive in property or stock what the same is reasonably worth in money at a fair, bona fide valuation; and provided further, that no fictitious stock shall be issued; that no stock shall be issued for profits not yet earned, but only anticipated; and provided further, that when stock is issued on the basis of the stock of any other corporation it may purchase, no stock shall be issued thereon for an amount greater than the sum it actually pays for such stock in cash or its equivalent; and provided further, that the property purchased or the property owned by the corporation whose stock is purchased shall be cognate in character and use to the property used or contemplated to be used by the purchasing corporation in the direct conduct of its own proper business; and in all cases when stock is to be issued for property purchased, or for the stock of other corporations purchased, a statement in writing, signed by the directors of

the purchasing company or by a majority of them, shall be filed in the office of the Secretary of State, showing what property has been purchased, and what stock of any other corporation has been purchased, and the amount actually paid therefor.

(2) That if any certificate made in pursuance of this act shall be false in any material representation, all the officers who sign the same, knowing it to be false, shall be guilty of misdemeanor, and the directors, officers, and agents of the corporation, who wilfully participate in making it, shall be guilty of misdemeanor. And provided, further, that any corporation which shall purchase the stock of any other corporation, or any property, for the purpose of restraining trade or commerce, or acquiring a monopoly, and the directors thereof participating therein, shall be guilty of a misdemeanor.

2. This act shall take effect immediately.

Approved February 19, 1913.

[Chapter 15, Laws of 1913.]

A FURTHER SUPPLEMENT To the act entitled "An act for the punishment of crimes (Revision of 1898)."

1. It shall be unlawful for any person, firm, corporation, or association, engaged in the production, manufacture, distribution, or sale of any commodity of general use, or rendering any service to the public, to discriminate between different persons, firms, associations or corporations, or different sections, communities, or cities of the State, by selling such commodity or rendering such service at a lower rate in one section, community, or city than another, or at a different rate or price at a point away from that of production or manufacture as at the place of production or manufacture, after making due allowance for the difference, if any, in the grade, quality, or quantity, and in the actual cost of transportation from the point of production or manufacture, if the effect or intent thereof is to establish or maintain a

virtual monopoly, hindering competition, or restriction of trade.

2. Any person or corporation violating this act shall be guilty of a misdemeanor and on conviction thereof shall be punished accordingly.

3. This act shall take effect immediately.

Approved February 19, 1913.

[Chapter 16, Laws of 1913.]

AN ACT To amend an act entitled "A further supplement to the act entitled 'An act for the punishment of crimes,' approved June fourteenth, one thousand eight hundred and ninety-eight (Revision of 1898)," which supplement was approved June second, one thousand nine hundred and five.

1. Section one of the act entitled "A further supplement to the act entitled 'An act for the punishment of crimes,' approved June fourteenth, one thousand eight hundred and ninety-eight (Revision of 1898)," which supplement was approved June second, one thousand nine hundred and five, be and the same is hereby amended so as to read as follows:

(1.) Any person or persons, who shall organize, or incorporate, or procure to be organized, or incorporated, any corporation or body politic, under the laws of this State, with intent thereby to further, promote, or conduct any object which is fraudulent or unlawful under the laws of this State, or which is intended to be used in restraint of trade or in acquiring a monopoly, when such corporation or body politic engages in interstate or intrastate commerce, shall be guilty of a misdemeanor.

2. Section two of the said supplement shall be and the same is hereby amended so as to read as follows:

(2.) Any person, or persons, being officers, directors, managers, or employees of any corporation or body politic, incorporated under the laws of this State, who shall wilfully

use, operate, or control said corporation or body politic, or suffer the same to be used for the furtherance or promotion of any object fraudulent or unlawful under the laws of this State, or who shall use the same directly or indirectly in restraint of trade or in acquiring a monopoly, when such corporation or body politic engages in interstate or intrastate commerce, shall be guilty of a misdemeanor.

3. If any part or parts of this act shall be declared to be invalid or unconstitutional, the other parts hereof shall not thereby be affected or impaired.

4. This act shall take effect immediately.

Approved, February 19, 1913.

[Chapter 17, Laws of 1913.]

AN ACT To amend section one hundred and nine of an act entitled "An act concerning corporations (Revision of 1896)," approved April twenty-first, one thousand eight hundred and ninety-six.

1. Section one hundred and nine of the act entitled "An act concerning corporations (Revision of 1896)," be and the same is hereby amended so as to read as follows:

109. When two or more corporations are merged or consolidated the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume, in order to effect such merger or consolidation; to secure the payment of which bonds or obligations it shall be lawful to mortgage its corporate franchises, rights, privileges, and property, real, personal and mixed; provided, such bonds shall not bear a greater rate of interest than six per centum per annum; the consolidated corporation may issue capital stock, either common or preferred, or both, to such an amount as may be necessary, to the stockholders of such merging or consolidating corporation in exchange or payment for their original shares, in the manner and on the terms speci-

fied in the agreement of merger, or consolidation, which may fix the amount and provide for the issue of preferred stock based on the property or stock of the merging or consolidating corporation conveyed to the consolidated corporations as well as upon money capital paid in.

2. This act shall take effect immediately.

Approved, February 19, 1913.

[Chapter 18, Laws 1913.]

1. Section fifty-one of the act referred to in the title of this act is hereby amended to read as follows:

51. No corporation heretofore organized or hereafter to be organized under the provisions of this act to which this is an amendment, or the amendments thereof or supplements thereto, except as otherwise provided therein or thereby, shall hereafter purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the corporate stock of any other corporation or corporations of this or any other State, or of any bonds, securities, or other evidences of indebtedness created by any other corporation or corporations of this or any other State, nor as owner of such stock exercise any of the rights, powers, and privileges of ownership, including the right to vote thereon. Provided, that nothing herein contained shall operate to prevent any corporation or corporations from acquiring the bonds, securities, or other evidences of indebtedness created by any non-competing corporation in payment of any debt or debts due from any such non-competing corporation; nor to prevent any corporation or corporations created under the laws of this State from purchasing as a temporary investment out of its surplus earnings, reserved under the provisions of this act, as a working capital, bonds, securities, or evidences of indebtedness created by any non-competing corporation or corporations of this or any other State, or from investing in like securities any funds held by it for the benefit of its employees or any funds held for insurance, any such non-competing corporation; nor to prevent any corporation or corporations created

under the laws of this State from purchasing the bonds, securities, or other evidences of indebtedness created by any corporation the stock of which may lawfully be purchased under the authority given by Section forty-nine of the act entitled "An act concerning corporations (Revision of 1896)" provided, also, that nothing herein contained shall be held to affect or impair any right heretofore acquired in pursuance of the section hereby amended, by any corporation created under the laws of this State.

2. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Approved, February 19, 1913.

[Chapter 19, Laws 1913.]

A FURTHER SUPPLEMENT To an act entitled "An act concerning corporations (Revision of 1896)," approved April twenty-first, one thousand eight hundred and ninety-six.

1. A merger of corporations made under the provisions of the act to which this act is a supplement, shall not in any manner impair the rights of any creditor of either of the merged corporations.

2. Before any merger of corporations can be made, the approval thereof in writing by the Board of Public Utility Commissioners of this State shall be obtained by said corporations and filed in the office of the Secretary of State, with the names of the directors of each of said corporations which assent to the merger.

3. Every corporation, and the directors thereof, procuring or assenting to such merger without complying with the provisions hereinbefore contained, shall be guilty of a misdemeanor and punishable accordingly.

4. This act shall take effect immediately.

Approved, February 19, 1913.

LAWS OF NEW JERSEY, 1917 pp. 565-568

CHAPTER 194.

An Act to amend an act entitled "A further supplement to the act entitled 'An act for punishment of crimes (Revision of 1898),'" approved February nineteenth, nineteen hundred and thirteen.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The act entitled "A further supplement to the act entitled 'An act for the punishment of crimes (Revision of 1898),'" is hereby amended to read as follows:

It shall be unlawful for any person, firm, corporation or association engaged in commerce or trade, in the course of such commerce or trade, either directly or indirectly, to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption or resale within this State, where the effect of such discrimination is to substantially lessen competition or tend to create a monopoly in any line of commerce or trade; provided, that nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality or quantity of the commodities sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition; and provided, further, that nothing herein contained shall prevent persons engaged in selling goods, wares or merchandise in commerce or trade from selecting their own customers in bona fide transactions and not in restraint of trade.

2. Any person, firm, or corporation or association violat-

ing this act shall be guilty of a misdemeanor, and on conviction thereof shall be punished accordingly.

3. All acts and parts of acts inconsistent herewith are hereby repealed.

4. This act shall take effect immediately. Approved March 28, 1917.

CHAPTER 195.

An Act concerning the corporations of this State.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Any corporation formed under any law of this State may purchase property, real and personal, and, except as hereinafter is prohibited, the stock of any other corporation necessary or desirable for its business, and pay therefor in cash or its equivalent, or in the capital stock of the purchasing corporation to the amount of the value thereof, and the stock so issued shall be full paid stock and not liable to any further call; and any such corporation may also issue stock for the amount it actually pays for labor performed; provided, that when property or stock is purchased the purchasing corporation shall receive in property or stock what the same is reasonably worth in money at a fair bona fide valuation; and provided, further, that no fictitious stock shall be issued.

2. No such corporation engaged in trade or commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation also engaged in trade or commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such trade or commerce in any section or community, or tend to create a monopoly of any line of trade or commerce.

No such corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in trade or commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain trade or commerce in any section or community, or tend to create a monopoly of any line of trade or commerce.

Nothing in this section contained shall apply to corporations subject to the jurisdiction of the Public Utilities act, approved April twenty-first, one thousand nine hundred and eleven, and the acts passed supplemental thereto, nor to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in trade or commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

3. Subject to the foregoing provisions of this act:

Any corporation may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock or, any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other State or any foreign country, and while owner of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

4. Nothing contained in this act shall be held to affect or impair any right heretofore legally acquired.

5. If any part or parts of this act shall be declared to be invalid or unconstitutional, the other parts thereof shall not thereby be affected or impaired.

6. Section forty-nine of the act entitled "An act concerning corporations (Revision of 1896)," as amended by an act entitled "A further supplement to an act entitled 'An Act concerning corporations (Revision of 1896),' approved April twenty-first, one thousand eight hundred and ninety-six," for the purpose of amending section forty-nine thereof, which amendment was approved February nineteenth, one thousand nine hundred and thirteen, and section fifty-one of the act entitled "An act concerning corporations (Revision of 1896)," as amended by an act entitled "An act to amend an act entitled 'An act concerning corporations (Revision of 1896),' approved April twenty-first, eighteen hundred and ninety-six, which amendment was approved February nineteenth, one thousand nine hundred and thirteen," and as further amended by chapter 114 of the Laws of 1915, and all other acts and parts of acts inconsistent herewith be and the same are hereby repealed.

7. This act shall take effect immediately.

Approved March 28, 1917.

APPENDIX F

FEDERAL TRUST LEGISLATION IN THE UNITED STATES

1. The Federal Anti-Trust Law.
2. Anti-Trust Provisions of the Wilson Act.
3. The Expediting Act.
4. Act Creating the Bureau of Corporations.
5. Immunity Provision of 1903.
6. Immunity Provision of 1906.
7. The Judicial Code.
8. The Panama Canal Act.
9. The Federal Trade Commission Act.
10. The Clayton Act.
11. Sundry Civil Act—1916.
12. The Webb Bill.

1. THE FEDERAL ANTI-TRUST LAW

[Act of July 2, 1890 (26 Stat., 209).]

AN ACT To protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on

conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition set-

ting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under Section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in Section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and

associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

2. ANTI-TRUST PROVISIONS OF WILSON TARIFF ACT OF AUGUST 27, 1894, AS AMENDED BY THE ACT OF FEBRUARY 12, 1913.

[28 Stat., 570; 37 Stat., 667.]

SEC. 73. That every combination, conspiracy, trust, agreement, or contract, is hereby declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

SEC. 74. That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of Section seventy-three of this act; and it

shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 75. That whenever it shall appear to the court before which any proceedings under the seventy-fourth section of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

SEC. 76. That any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in Section seventy-three of this act, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 77. That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is

found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

3. EXPEDITING ACT OF FEBRUARY 11, 1903, AS AMENDED BY THE ACT OF JUNE 25, 1910.

[32 Stat., 823; 36 Stat., 854.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section one of the act entitled: "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted," approved February eleventh, nineteen hundred and three, be, and the same is hereby, amended so as to read as follows:

"That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety, 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before

not less than three of the circuit judges of said court, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the Justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be equally divided in opinion as to the decision or disposition of said cause, or in the event that a majority of said judges shall be unable to agree upon the judgment, order, or decree finally disposing of said case in said court which should be entered in said cause, then they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the clerk of the circuit court in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof. The provisions of this section shall apply to all causes and proceedings in all courts now pending, or which may hereafter be brought."

SEC. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court, and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an

appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

4. ACT OF CONGRESS CREATING BUREAU OF CORPORATIONS

[Approved, February 14, 1903 (32 Stat. 827).]

SEC. 6. That there shall be in the Department of Commerce and Labor a bureau to be called the Bureau of Corporations, and a Commissioner of Corporations who shall be the head of said bureau, to be appointed by the President, who shall receive a salary of five thousand dollars per annum. There shall also be in said Bureau a deputy commissioner who shall receive a salary of three thousand five hundred dollars per annum, and who shall in the absence of the Commissioner act as, and perform the duties of, the Commissioner of Corporations, and who shall also perform such other duties as may be assigned to him by the Secretary of Commerce and Labor or by the said Commissioner. There shall also be in the said bureau a chief clerk and such special agents, clerks, and other employees as may be authorized by law.

The said Commissioner shall have power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct, and management of the business of any corporation, joint stock company, or corporate combination engaged in commerce among the several States and with foreign nations excepting common carriers subject to "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and to gather such information and data as will enable the President of the United States

to make recommendations to Congress for legislation for the regulation of such commerce, and to report such data to the President from time to time as he shall require; and the information so obtained or as much thereof as the President may direct shall be made public.

In order to accomplish the purposes declared in the foregoing part of this section, the said Commissioner shall have and exercise the same power and authority in respect to corporations, joint stock companies, and combinations subject to the provisions hereof, as is conferred on the Interstate Commerce Commission in said "Act to regulate commerce" and the amendments thereto in respect to common carriers so far as the same may be applicable, including the right to subpœna and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths. All the requirements, obligations, liabilities, and immunities imposed or conferred by said "Act to regulate commerce" and by "An Act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, supplemental to said "Act to regulate commerce," shall also apply to all persons who may be subpœnaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section.

It shall also be the province and duty of said bureau, under the direction of the Secretary of Commerce and Labor, to gather, compile, publish, and supply useful information concerning corporations doing business within the limits of the United States as shall engage in interstate commerce or in commerce between the United States and any foreign country, including corporations engaged in insurance, and to attend to such other duties as may be hereafter provided by law.

5. IMMUNITY PROVISION OF 1903

[32 Stat., 854, 903.]

AN ACT Making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes.

. . . . . .

That for the enforcement of the provisions of the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof or supplemental thereto, and of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, and all acts amendatory thereof or supplemental thereto, and sections seventy-three seventy-four, seventy-five, and seventy-six of the act entitled "An act to reduce taxation, to provide revenue for the Government, and other purposes," approved August twenty-seventh, eighteen hundred and ninety-four, the sum of five hundred thousand dollars, to be immediately available, is hereby appropriated, out of any money in the Treasury not heretofore appropriated, to be expended under the direction of the Attorney-General in the employment of special counsel and agents of the Department of Justice to conduct proceedings, suits, and prosecutions under said acts in the courts of the United States: *Provided*, That no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said acts: *Provided further*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

. . . . . .

Approved, February 25, 1903.

6. ACT DEFINING RIGHT OF IMMUNITY

[34 Stat., 798.]

AN ACT Defining the right of immunity of witnesses under the act entitled "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, and an act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and an act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and an act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under the immunity provisions in the act entitled "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, in section six of the act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and in the act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and in the act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three, immunity shall extend only to a natural person who, in obedience to a subpœna, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

Approved, June 30, 1906.

7. THE JUDICIAL CODE

"AN ACT To codify, revise, and amend the laws relating to the judiciary." (Approved March 3, 1911; in effect January 1, 1912, 36 Stat., 1087.)

. . . . . .

SEC. 289. The circuit courts of the United States, upon the taking effect of this act, shall be and hereby are abolished. . . .

SEC. 290. All suits and proceedings pending in said circuit courts on the date of the taking effect of this act, whether originally brought therein or certified thereto from the district courts, shall thereupon and thereafter be proceeded with and disposed of in the district courts in the same manner and with the same effect as if originally begun therein. . . .

SEC. 291. Wherever, in any law not embraced within this act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall, upon the taking effect of this act, be deemed and held to refer to, and to confer such power and impose such duty upon, the district courts.

8. PANAMA CANAL ACT

[Act of Mar. 4, 1913 (37 Stat., 560).]

AN ACT To provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone.

. . . . . .

SEC. 11. That Section five of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby amended by adding thereto a new paragraph at the end thereof, as follows:

"From and after the first day of July, nineteen hundred and fourteen, it shall be unlawful for any railroad company or other common carrier subject to the act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offence."

Jurisdiction is hereby conferred on the Interstate Commerce Commission to determine questions of fact as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said commission shall be final.

If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in

the interest of the public and is of advantage to the convenience and commerce of the people and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July first, nineteen hundred and fourteen. In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the act to regulate commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation: *Provided,* Any application for extension under the terms of this provision filed with the Interstate Commerce Commission prior to July first, nineteen hundred and fourteen, but for any reason not heard and disposed of before said date, may be considered and granted thereafter.

No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of the act of Congress approved July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," or the provisions of sections seventy-three to seventy-seven, both inclusive, of an act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," or the provisions of any other act of Congress amending or supplementing the said act of July second, eighteen hundred and ninety, commonly known as the Sherman Anti-Trust Act, and amendments thereto, or said sections of the act of

August twenty-seventh, eighteen hundred and ninety-four. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ships are parties. Suit may be brought by any shipper or by the Attorney-General of the United States.

. . . . . .

9. THE FEDERAL TRADE COMMISSION ACT

[Act of September 26, 1914 (38 Stat., 717).]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the

remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

SEC. 2. That each commissioner shall receive a salary of $10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

"Anti-trust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects

to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme

Court upon certiorari as provided in Section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commisson or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the anti-trust acts.

Complaints, orders, and other processes of the commission under this section may be served by any one duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such

person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

SEC. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the anti-trust

Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney-General it shall be its duty to make such investigation. It shall transmit to the Attorney-General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the anti-trust Acts by any corporation.

(e) Upon the application of the Attorney-General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the anti-trust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney-General as provided in the anti-trust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

SEC. 9. That for the purposes of this Act, the commission or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpœnas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such

documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney-General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid

the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpœna of the commission on the ground or for the reason that the testimony or evidence documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpœna issued by it; *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpœna or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records,

or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offence against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof,

shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the anti-trust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said anti-trust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

10. THE CLAYTON ACT

[Act of October 15, 1914 (38 Stat. 730).]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "anti-trust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the

United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce; *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the anti-trust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not

apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain, or punish violations of any of the anti-trust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock, or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or other-

wise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the anti-trust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association, or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than $5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

No bank, banking association, or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association, or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the anti-trust laws. The eligibility of a director under the foregoing provision shall be

determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

SEC. 9. Every president, director, officer, or manager of any firm, association, or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts, or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property, or assets of such firm, association, or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than $500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offence may have been committed.

That nothing in this section shall be held to take away or

impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors, and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent any one from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commis-

sion a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney-General.

If any common carrier shall violate this section it shall be fined not exceeding $25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

SEC. 11. That authority to enforce compliance with sections two, three, seven, and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven, and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have

the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission

or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in Section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission

or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the anti-trust Acts.

Complaints, orders, and other processes of the commission or board under this section may be served by any one duly authorized by the commission or board either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

SEC. 12. That any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the anti-trust laws may run into any other district: *Provided*, That in civil cases no writ of subpœna shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain

such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpœnas to that end may be served in any district by the marshal thereof.

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the anti-trust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervi-

sion, or other jurisdiction of the Interstate Commerce Commission.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Section two hundred and sixty-three of an Act entitled

"An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend Section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

SEC. 18. That, except as otherwise provided in Section sixteen of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right,

of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or things so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,* That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and

such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court,

or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within Section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Approved, October 15, 1914.

11. SUNDRY CIVIL ACT—1916

[June, 1916.]

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.

. . . . . .

Enforcement of anti-trust laws, including not exceeding $15,000 for salaries of necessary employees at the seat of government, $250,000: *Provided, however*, That no part of this money shall be spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours, or bettering the conditions of labor, or for any act done in furtherance thereof not in itself unlawful: *Provided further*, That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who coöperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products. . . .

12. THE WEBB BILL*

64th Congress
1st Session

H. R. 16707

IN THE HOUSE OF REPRESENTATIVES

[June 28, 1916]

Mr. Webb introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed.

A BILL

To promote export trade, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign

*This bill, pending in Congress (May, 1917), seems likely soon to be enacted into law and is therefore included with this list. If this bill becomes law it will be the first break in Federal Anti-Trust legislation.

nation; but the words "export trade" shall not be deemed to include the production or manufacture of such goods, wares, or merchandise, or any act in the course of production or manufacture.

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word "association" wherever used in this Act means any corporation or combination by contract or otherwise of two or more persons.

Sec. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such trade, or an agreement made or act done in the course of export trade by such association, provided such agreement or act is not in restraint of trade within the United States.

Sec. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade.

Sec. 4. That the words "unfair methods of competition" wherever used in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Sec. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter for the sole purpose of engaging in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a written statement setting forth the location of its offices or places of business, and the names and addresses of all its officers, and of all its stockholders, or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

APPENDIX G

FOREIGN LEGISLATION ON INDUSTRIAL COMBINATIONS*

1. GREAT BRITAIN
2. AUSTRALIA
3. NEW ZEALAND
4. CANADA
5. RUSSIA
6. GERMANY

1. GREAT BRITAIN

The law of Great Britain regarding industrial combinations is included in its general corporation law which after several years of special investigation was revised and consolidated in 1900. The provisions of the common law regarding monopolies and restraints of trade remain unchanged. However, in order to prevent fraud of any nature and to keep the public fully informed of their investments in case they take pains to investigate them, special provisions have been made for the promotion of new enterprises and the special reports that should be made by all public companies. Regarding promotions the following paragraph is of interest:

The law now provides that a prospectus, which it defines as any notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company, must be filed with the registrar of companies, and must show (1) the names and addresses of the vendors, and where there is more than one separate

*For the full text and further information regarding the legislation cited in Appendix G and for legislation in other countries see "Laws on Trusts and Monopolies, Domestic and Foreign" (1914) and "Trust Laws and Unfair Competition" (1915) as cited under U. S. Government publications, Appendix H.

vendor, or the company is a subpurchaser, the amount payable to each vendor; (2) the particulars and the nature and extent of the interest of every director in the promotion of, or property to be acquired by, the company; (3) the dates of and parties to every material contract, and a reasonable time and place for the inspection of such contracts; and further, that a company which does not issue a prospectus shall not allot any shares or debentures until a statement in lieu of a prospectus has been filed. A person is deemed a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company.

The purpose of the legislation is to disclose the real vendor, the real purchase price, and who is profiting by the promotion.

2. AUSTRALIA

The British colonies have gone further than Great Britain in direct attacks upon monopolies. Australia and New Zealand seem to have attacked these combinations quite in the spirit of many of the American states. The Australian Industries Preservation Act of 1906 as amended in 1907, 1909, and 1910, in its title provides "for the preservation of Australian industries, for the repression of destructive monopolies." The following extracts contain the most important provisions of the Act:

PART II. REPRESSION OF MONOPOLIES

4. (1) Any person who, either as principal or as agent, makes or enters into any contract, or is or continues to be a member of or engages in any combination in relation to trade or commerce with other countries or among the States—(a) in restraint of or with intent to restrain trade or commerce; or (b) to the destruction or injury of or with intent to destroy or injure by means of unfair competition

any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers, is guilty of an offense.

Penalty, £500, or, in the case of a continuing offense, £500 for each day during which the offense continues.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

(3) It shall be a defense to a proceeding for an offense under paragraph (a) of subsection (1) of this section, and an answer to an allegation that a contract was made or entered into in restraint of, or with intent to restrain, trade or commerce, if the party alleged to have contravened this section proves (a) that the matter or thing alleged to have been done in restraint of, or with intent to restrain, trade or commerce was not to the detriment of the public; and (b) that the restraint of trade or commerce effected or intended was not unreasonable.

(Section 5 repealed.)

6. (1) For the purposes of section 4 and section 10 of this act, unfair competition means competition which is unfair in the circumstances; and in the following cases the competition shall be deemed to be unfair unless the contrary is proved:

(a) If the defendant is a commercial trust.

(b) If the competition would probably or does in fact result in an inadequate remuneration for labor in the Australian industry.

(c) If the competition would probably or does in fact result in an inadequate remuneration for labor in the Australian industry or throwing workers out of employment.

(d) If the defendant, with respect to any goods or services which are the subject of the competition, gives, offers, or promises to any person any rebate, refund, discount, or

reward upon condition that that person deals, or in consideration of that person having dealt, with the defendant to the exclusion of other persons dealing in similar goods or services.

(2) In determining whether the competition is unfair, regard shall be had to the management, the processes, the plant, and the machinery employed or adopted in the Australian industry affected by the competition being reasonably efficient, effective, and up to date.

7. (1) Any person who monopolizes or attempts to monopolize, or combines or conspires with any other person to monopolize, any part of the trade or commerce with other countries or among the states, is guilty of an indictable offense.

Penalty, £500 for each day during which the offense continues, or one year's imprisonment, or both; or, in the case of a corporation, £1,000 for each day during which the offense continues.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

(3) The attorney-general may elect, instead of proceeding by indictment for an offense against this section, to institute proceedings in the high court by way of civil action for the recovery of the pecuniary penalties for the offense; in which case the action shall be tried before a justice of that court without a jury.

7A. (1) Any person who, in relation to trade or commerce with other countries or among the states, either as principal or agent, in respect of dealings in any goods or services gives, offers, or promises to any other person any rebate, refund, discount, concession, or reward for the reason, or upon the condition, express or implied, that the latter person (a) deals, or has dealt, or will deal, or intends to deal exclusively with any person, either in relation to any

particular goods or services or generally; or (b) deals, or has dealt, or will deal, or intends to deal exclusively with members of a commercial trust, either in relation to any particular goods or services or generally; or (c) does not deal, or has not dealt, or will not deal, or does not intend to deal with certain persons, either in relation to any particular goods or services or generally; or (d) is or becomes a member of a commercial trust; is guilty of an offense.

Penalty, £500.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

(3) It shall be a defense to a prosecution under this section, and an answer to an allegation that a contract was made or entered into in contravention of this section, if the party alleged to have contravened this section proves that the matter or thing alleged to have been done in contravention of this section was not to the detriment of the public, and did not constitute competition which was unfair in the circumstances, and was not destructive of or injurious to any Australian industry.

7B. Any person who, in relation to trade and commerce with any other countries or among the states, either as principal or agent, refuses either absolutely or except upon disadvantageous conditions to sell or supply to any other person any goods or services for the reason that the latter person (a) deals, or has dealt, or will deal, or intends to deal with any person; or (b) deals, or has dealt, or will deal, or intends to deal with persons who are not members of a commercial trust; or (c) is not a member of a commercial trust; is guilty of an offense.

Penalty, £500.

11. (1) Any person who is injured in his person or property by any other person, by reason of any act or thing done by that other person in contravention of this part of this

act, or by reason of any act or thing done in contravention of any injunction granted under this part of this act, may, in the high court, before a justice, without a jury, sue for and recover treble damages for the injury.

(2) No person shall, in any proceeding under this section, be excused from answering any question put either viva voce or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him; but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury.

17. Unfair competition has in all cases reference to competition with those Australian industries, the preservation of which, in the opinion of the comptroller general or a justice as the case may be, is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers.

22. (1) Upon the receipt of the determination of the justice the minister shall forthwith cause it to be published in the *Gazette*.

(2) If the justice determines that the imported goods are being imported with the intent alleged, and that their importation should be prohibited either absolutely or subject to any specified conditions or restrictions or limitations of any kind whatsoever (a) the determination when so published shall have the effect of a proclamation under the customs act, 1901, prohibiting the importation of the goods either absolutely or subject to those conditions or restrictions or limitations as the case may be; and in that case the provisions of that act shall apply to goods so prohibited; and (b) the justice may by order reduce the amount recoverable under any bond given in pursuance of this part of this

act to such sum as the importer satisfies him is reasonable and just in the circumstances.

23. The governor general may at any time, by proclamation simultaneously with or subsequently to any prohibition under this part of this act, rescind in whole or in part the prohibition or any condition or restriction or limitation on importation imposed thereby.

24. In all cases of prohibition the determination of the justice, and any proclamation affecting the same, shall be laid before both houses of the Parliament within seven days after the publication in the *Gazette*, or, if the Parliament is not then sitting, within seven days after the next meeting of Parliament.

3. NEW ZEALAND

The New Zealand Act for the repression of monopolies in trade or commerce of 1910 goes quite into detail as regards restraints of business. The following quotations illustrate fully its spirit:

2. (1) In this act, unless the contrary intention appears, "commercial trust," means any association or combination (whether incorporated or not) of any number of persons, established either before or after the commencement of this act, and either in New Zealand or elsewhere, and (a) having as its object, or as one of its objects, that of (1) controlling, determining, or influencing the supply or demand or price of any goods in New Zealand or any part thereof or elsewhere, or that of (2) creating or maintaining in New Zealand or any part thereof or elsewhere a monopoly, whether complete or partial, in the supply or demand of any goods; or (b) acting in New Zealand or elsewhere with any such object as aforesaid; and includes any firm or incorporated company having any such object, or acting as aforesaid.

3. Every person commits an offense who, either as principal

or agent, in respect of dealings in any goods, gives, offers, or agrees to give to any other person any rebate, refund, discount, concession, allowance, reward, or other valuable consideration for the reason or upon the express or implied condition that the latter person—

(a) Deals or has dealt or will deal, or intends or undertakes or has undertaken or will undertake to deal, exclusively or principally, or to such an extent as amounts to exclusive or principal dealing, with any person or class of persons, either in relation to any particular goods or generally; or

(b) Does not deal or has not dealt or will not deal, or intends or undertakes or has undertaken or will undertake not to deal, with any person or class of persons, either in relation to any particular goods or generally; or (c) restricts or has restricted or will restrict, or intends or undertakes or has undertaken or will undertake to restrict, his dealing with any person or class of persons, either in relation to any particular goods or generally; or

(d) Is or becomes or has been, or has undertaken or will undertake to become, a member of a commercial trust; or

(e) Acts or has acted or will act, or intends or undertakes or has undertaken or will undertake to act, in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale, purchase, or supply of any goods.

4. Every person commits an offense who, either as principal or agent, refuses, either absolutely or except upon disadvantageous or relatively disadvantageous conditions, to sell or supply to any other person, or to purchase from any other person, any goods for the reason that the latter person—

(a) Deals or has dealt or will deal, or intends to deal,

or has not undertaken or will not undertake not to deal, with any person or class of persons, either in relation to any particular goods or generally; or

(b) Is not or has not been, or will not become or undertake to become or has not undertaken to become, a member of a commercial trust; or

(c) Does not act or has not acted or will not act, or does not intend to act, or has not undertaken or will not undertake to act, in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale, purchase, or supply of any goods.

5. Any person who conspires with any other person to monopolize wholly or partially the demand or supply in New Zealand or any part thereof of any goods, or to control wholly or partially the demand or supply or price in New Zealand or any part thereof of any goods, is guilty of an offense if such monopoly or control is of such a nature as to be contrary to the public interest.

6. (1) Every person commits an offense who, either as principal or agent, sells or supplies, or offers for sale or supply, any goods at a price which is unreasonably high, if that price has been in any manner directly or indirectly determined, controlled, or influenced by any commercial trust of which that person or his principal (if any) is or has been a member.

(2) Every person commits an offense who, in obedience to or in consequence of or in conformity with any determination, direction, suggestion, or request of any commercial trust, whether he is a member of that trust or not, sells or supplies, or offers for sale or supply, any goods, whether as principal or agent, at a price which is unreasonably high.

7. (1) If any commercial trust, whether as principal or agent, sells or supplies, or offers for sale or supply, any

goods at a price which is unreasonably high, every person who is then a member of that trust shall be deemed to have committed an offense against this act.

(2) If in any such case the commercial trust is a corporation, it shall itself be guilty of an offense against this act; but the liability of the trust shall not exclude or affect the liability of its members under the last preceding subsection.

8. For the purposes of this act the price of any goods shall be deemed to be unreasonably high if it produces or is calculated to produce more than a fair and reasonable rate of commercial profit to the person selling or supplying, or offering to sell or supply, those goods, or to his principal, or to any commercial trust of which that person or his principal is a member, or to any member of any such commercial trust.

9. Every person who aids, abets, counsels, or procures, or is in any way knowingly concerned in the commission of, an offense against this act, or the doing of any act outside New Zealand which would if done in New Zealand be an offense against this act, shall be deemed to have committed that offense.

10. (1) Every person who commits an offense against this act shall be liable to a penalty of £500.

(2) If two or more persons are responsible for the same offense against this act, each of those persons shall be severally liable to a penalty of £500, and the liability of each of them shall be independent of the liability of the others.

SCHEDULE

GOODS TO WHICH THIS ACT APPLIES

Agricultural implements.
Coal.
Meat.
Fish.

Flour, oatmeal, and the other products or by-products of the milling of wheat or oats.

Petroleum or other mineral oil (including kerosene, naphtha, and the other products or by-products of any such oil).

Sugar.

Tobacco (including cigars and cigarettes).

4. CANADA

The spirit of the Canadian law is quite different from that found in the other colonies and is entirely in accordance with other late laws of the Dominion which seem to be conservative and to desire to regulate rather than to destroy. The Canadian Combines Investigation Act of 1910 is so unique and suggestive in its provisions that it is included in full.

CANADIAN COMBINES INVESTIGATION ACT, 1910

AN ACT to Provide for the Investigation of Combines, Monopolies, Trusts, and Mergers.

1. This Act may be cited as "The Combines Investigation Act."

2. (c) "Combine" means any contract, agreement, arrangement or combination which has, or is designed to have, the effect of increasing or fixing the price or rental of any article of trade or commerce for the cost of the storage or transportation thereof, or of the restricting competition in or of controlling the production, manufacture, transportation, storage, sale, or supply thereof, to the detriment of consumers or producers of such article of trade or commerce, and includes the acquisition, leasing, or otherwise taking over, or obtaining by any person to the end aforesaid, of any control over or interest in the business, or any portion of the business,

of any other person, and also includes what is known as a trust, monopoly, or merger;

(d) "Department" means the Department of Labour;

ADMINISTRATION

3. The Minister shall have the general administration of this Act.

4. The Governor in Council shall appoint a Registrar of Boards of Investigation, who shall have the powers and perform the duties prescribed.

ORDER FOR INVESTIGATION

5. Where six or more persons, British subjects resident in Canada and of full age, are of opinion that a combine exists, and that prices have been enhanced or competition restricted by reason of such combine, to the detriment of consumers or producers, such persons may make an application to a judge for an order directing an investigation into such alleged combine.

(2) Such application shall be in writing addressed to the judge, and shall ask for an order directing an investigation into the alleged combine, and shall also ask the judge to fix a time and place for the hearing of the applicants or their representative.

(3) The application shall be accompanied by a statement setting forth—

(a) The nature of the alleged combine and the persons believed to be concerned therein;

(b) The manner in which the alleged combine affects prices or restricts competition, and the extent to which the alleged combine is believed to operate to the detriment of consumers or producers;

(c) The names and addresses of the parties making the application and the name and address of one of their number

or of some other person whom they authorize to act as their representative for the purposes of this Act and to receive communications and conduct negotiations on their behalf.

(4) The application shall also be accompanied by a statutory declaration from each applicant declaring that the alleged combine operates to the detriment of the declarant as a consumer or producer, and that to the best of his knowledge and belief the combine alleged in the statement exists and that such combine is injurious to trade or has operated to the detriment of consumers or producers in the manner and to the extent described, and that it is in the public interest that an investigation should be had into such combine.

6. Within thirty days after the judge receives the application he shall fix a time and place for hearing the applicants and shall send due notice, by registered letter, to the representative authorized by the statement to receive communications on behalf of the applicants. At such hearing the applicants may appear in person or by their representative or by counsel.

7. If upon such hearing the judge is satisfied that there is reasonable ground for believing that a combine exists which is injurious to trade or which has operated to the detriment of consumers or producers, and that it is in the public interest that an investigation should be held, the judge shall direct an investigation under the provisions of this Act; or if not so satisfied, and the judge is of opinion that in the circumstances an adjournment should be ordered, the judge may adjourn such hearing until further evidence in support of the application is given, or he may refuse to make an order for an investigation.

(2) The judge shall have all the powers vested in the court of which he is a judge to summon before him and enforce the attendance of witnesses, to administer oaths, and

to require witnesses to give evidence on oath or on solemn affirmation (if they are persons entitled to affirm in civil matters), and to produce such books, papers, or other documents or things as the judge deems requisite.

8. The order of the judge directing an investigation shall be transmitted by him to the Registrar by registered letter, and shall be accompanied by the application, the statement, a certified copy of any evidence taken before the judge, and the statutory declarations. The order shall state the matters to be investigated, the names of the persons alleged to be concerned in the combine, and the names and addresses of one or more of their number with whom, in the opinion of the judge, the Minister should communicate in order to obtain the recommendation for the appointment of a person as a member of the Board as hereinafter provided.

APPOINTMENT OF BOARDS

9. Upon receipt by the Registrar of the order directing an investigation the Minister shall forthwith proceed to appoint a Board.

10. Every Board shall consist of three members, who shall be appointed by the Minister under his hand and seal of office.

11. Of the three members of the Board one shall be appointed on the recommendation of the persons upon whose application the order has been granted, one on the recommendation of the persons named in the order as being concerned in the alleged combine, and the third on the recommendation of the two members so chosen.

12. The persons upon whose application the order has been granted and the persons named in the order as being concerned in the alleged combine, within seven days after being requested so to do by the Registrar, may each respectively recommend the name of a person who is willing and ready

to act as a member of the Board, and the Minister shall appoint such persons members of the Board.

(3) If the parties, or either of them, fail or neglect to make any recommendation within the said period, or such extension thereof as the Minister, on cause shown grants, the Minister shall, as soon thereafter as possible, select and appoint a fit person or persons to be a member or members of the Board.

(4) The two members so appointed may, within seven days after their appointment, recommend the name of a judge of any court of record in Canada who is willing and ready to act as a third member of the Board, and the Minister shall appoint such judge as a member of the Board, and if they fail or neglect to make a recommendation within the said period, or such extension thereof as the Minister on cause shown grants, the Minister shall, as soon thereafter as possible, select and appoint a judge of any court of record in Canada to be the third member of the Board.

(5) The third member of the Board shall be its chairman.

(6) A vacancy in the membership of a Board shall be filled in the same manner as an original appointment is made.

13. No person shall act as a member of the Board who is one of the applicants for the Board or who has any direct pecuniary interest in the alleged combine that is the subject of investigation by such Board, or who is not a British subject.

14. As soon as possible after all the members of the Board have been appointed by the Minister, the Registrar shall notify the parties of the names of the chairman and other members of the Board.

15. Before entering upon the exercise of the functions of their office the members of the Board shall take the following oath:

I, ————, do solemnly swear——

That I will truly, faithfully, and impartially perform my duties as a member of the Board appointed to investigate——.

That I am a British subject.

That I have no direct pecuniary interest in the alleged combine that is to be the subject of investigation.

That I have not received nor will I accept either directly or indirectly any perquisite, gift, fee, or gratuity from any person in any way interested in any matter or thing to be investigated by the Board.

That I am not immediately connected in business with any of the parties applying for this investigation, and am not acting in collusion with any person herein.

INQUIRY AND REPORT

18. The Board shall expeditiously, fully, and carefully inquire into the matters referred to it and all matters affecting the merits thereof, including the question of whether or not the price or rental of any article concerned has been unreasonably enhanced, or competition in the supply thereof unduly restricted, in consequence of a combine, and shall make a full and detailed report thereon to the Minister, which report shall set forth the various proceedings and steps taken by the Board for the purpose of fully and carefully ascertaining all the facts and circumstances connected with the alleged combine, including such findings and recommendations as, in the opinion of the Board, are in accordance with the merits and requirements of the case.

(2) In deciding any question that may affect the scope or extent of the investigation, the Board shall consider what is required to make the investigation as thorough and complete as the public interest demands.

19. The Board's report shall be in writing, and shall be

signed by at least two of the members of the Board. The report shall be transmitted by the chairman to the Registrar, together with the evidence taken at such investigation certified by the chairman, and any documents and papers remaining in the custody of the Board. A minority report may be made and transmitted to the Registrar by any dissenting member of the Board.

21. Whenever, from or as a result of an investigation under the provisions of this Act, or from or as a result of a judgment of the Supreme Court or Exchequer Court of Canada or of any superior court or circuit, district or county court in Canada, it appears to the satisfaction of the Governor in Council that with regard to any article there exists any combine to promote unduly the advantage of the manufacturers or dealers at the expense of the consumers, and if it appears to the Governor in Council that such disadvantage to the consumer is facilitated by the duties of customs imposed on the article, or on any like article, the Governor in Council may direct either that such article be admitted into Canada free of duty or that the duty thereon be reduced to such amount or rate as will, in the opinion of the Governor in Council, give the public the benefit of reasonable competition.

22. In case the owner or holder of any patent issued under the Patent Act has made use of the exclusive rights and privileges which, as such owner or holder he controls, so as unduly to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any article which may be a subject of trade or commerce, or so as to restrain or injure trade or commerce in relation to any such article, or unduly to prevent, limit, or lessen the manufacture or production of any article or unreasonably to enhance the price thereof, or unduly to prevent or lessen competition in the production, manufacture, purchase, barter, sale, trans-

portation, storage, or supply of any article, such patent shall be liable to be revoked. And, if a Board reports that a patent has been so made use of, the Minister of Justice may exhibit an information in the Exchequer Court of Canada praying for a judgment revoking such patent, and the court shall thereupon have jurisdiction to hear and decide the matter and to give judgment revoking the patent or otherwise as the evidence before the court may require.

23. Any person reported by a Board to have been guilty of unduly limiting the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any article which may be a subject of trade or commerce; or of restraining or injuring trade or commerce in relation to any such article; or of unduly preventing, limiting, or lessening the manufacture or production of any such article; or of unreasonably enhancing the price thereof; or of unduly preventing or lessening competition in the production, manufacture, purchase, barter, sale, transportation, storage, or supply of any such article, and who thereafter continues so to offend, is guilty of an indictable offence and shall be liable to a penalty not exceeding one thousand dollars and costs for each day after the expiration of 10 days, or such further extension of time as in the opinion of the Board may be necessary, from the date of the publication of the report of the Board in the Canada *Gazette* during which such person so continues to offend.

SITTINGS OF BOARD

25. The proceedings of the Board shall be conducted in public, but the Board may order that any portion of the proceedings shall be conducted in private.

26. The decision of any two of the members present at a sitting of the Board shall be the decision of the Board.

27. The presence of the chairman and at least one other

member of the Board shall be necessary to constitute a sitting of the Board.

28. In case of the absence of any one member from a meeting of the Board the other two members shall not proceed, unless it is shown that the absent member has been notified of the meeting in ample time to admit of his attendance.

REMUNERATION AND EXPENSES OF BOARD

40. No member of the Board shall accept, in addition to his travelling expenses and allowances as a member of the Board, any perquisite, gift, fee, or gratuity of any kind from any person in any way interested in any matter or thing that is being investigated by the Board. The acceptance of any such perquisite, gift, fee, or gratuity by any member of the Board shall be an offence, and shall render such member liable upon summary conviction to a fine not exceeding one thousand dollars, and he shall thereafter be disqualified to act as a member of any Board.

MISCELLANEOUS

42. No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity.

43. Evidence of a report of a Board may be given in any court by the production of a copy of the Canada *Gazette* purporting to contain a copy of such report, or by the production of a copy of the report purporting to be certified by the Registrar to be a true copy.

44. The Minister shall determine the allowance or amounts to be paid to all persons, other than the members of a Board employed by the Government or any Board, including the secretaries, clerks, experts, stenographers, or other persons performing any services under the provisions of this Act.

45. The Governor in Council may make such regulations, not inconsistent with this Act, as to him seem necessary for

carrying out the provisions of this Act and for the efficient administration thereof.

(2) Such regulations shall be published in the Canada *Gazette*, and upon being so published they shall have the same force as if they formed part of this Act.

(3) The regulations shall be laid before both Houses of Parliament within fifteen days after such publication if Parliament is then sitting, and if Parliament is not then sitting then within fifteen days after the opening of the next session thereof.

46. The Minister shall lay before Parliament, within the first fifteen days of the then next session, an annual report of the proceedings under this Act.

5. RUSSIA

The chief provisions of the law affecting industrial combinations in Russia are found in Section 242 of the new Criminal Code, which received imperial sanction on March 22, 1903, namely:

SEC. 242. A merchant or manufacturer who increases the prices of victuals or other articles of prime necessity in an extraordinary degree in accord with other merchants or manufacturers dealing in the same articles shall be punished with imprisonment.

If the culprit took advantage of the extreme need of the local population caused by the scarcity of these articles, he shall be punished with imprisonment of not less than three months.

A merchant or a manufacturer who increases the prices of victuals or other articles of prime necessity in an extraordinary degree to take advantage of the extreme need of the local population caused by the scarcity of such articles, is subject to the punishment fixed in paragraph one of this section.

The chief sections of the Penal Code of 1885 relating to combinations are likewise given here.

SEC. 913. For a conspiracy, an understanding, or other agreement among dealers for the purpose of increasing prices of articles of consumption the culprits shall be subject to punishments and fines provided by Section 1180 of the present Code.

SEC. 1180. In case of a conspiracy among merchants or manufacturers for the purpose of increasing not only the prices of victuals but also of other articles necessary for consumption or for an undue decreasing of the price with a view to impeding those who transport or supply these articles and thereby preventing also their further and larger supply the ringleaders of such unlawful agreements shall be subject to imprisonment for a term of from four to eight months; and the rest of them who only participated therein shall be punished, in accordance with the degree of their participation either by imprisonment of from three weeks to three months; or by a fine not exceeding two hundred roubles.

If, however, such a conspiracy caused an actual scarcity of articles of prime necessity and this led to a disturbance of social peace, then the ringleaders shall be punished by the deprivation of certain special rights and privileges, in accordance with Section 50 of this Code, and by imprisonment for a term of from one year and four months to two years; and the rest of the culprits by imprisonment for a term of from four to eight months.

6. GERMANY

In Chapter XII the general tendency of the laws in the leading European countries has been considered. However, inasmuch as the tendency of legislation in the United States at the present time seems to be directed especially against unfair competition it has been thought best to in-

clude here the detailed German law against unfair competition of June 7, 1909, as follows:

6. GERMAN LAW AGAINST UNFAIR COMPETITION OF JUNE 7, 1909

WE, William, by the Grace of God, German Emperor, King of Prussia, etc., decree in the name of the Kingdom, with the consent of the Federal Council and of the Imperial Diet, as follows:

SEC. 1. Whoever in business affairs, for the purpose of competition, commits acts which are repugnant to good morals may be subject to an action to desist therefrom and to pay damages.

SEC. 2. Under goods, within the meaning of this law, agricultural products are also to be understood, under industrial services and interests, agricultural services and interests also.

SEC. 3. Whoever in public advertisements or in communications intended for an extensive group of persons, makes incorrect statements regarding business relations, especially regarding the quality, the origin, the method of production, or the scale of prices of goods or industrial services, regarding the kind of supply or the source of supply of goods, regarding the possession of marks of distinction, regarding the cause or the purpose of the sale, or regarding the quantity of the stocks, which are adapted to create the impression of an especially favorable offer, is subject to an action to desist from such incorrect statements.

SEC. 4. Whoever, with the intention to create the impression of an especially favorable offer, knowingly makes untrue statements and statements adapted to mislead, in public advertisements or in communications intended for an extensive group of persons, regarding business relations, especially regarding the quality, the origin, the method of produc-

tion or the scale of prices of goods or industrial services, regarding the kind of supply or the source of supply of goods, regarding the possession of marks of distinction, regarding the cause or the purpose of the sale, or regarding the quantity of the stock, is punished with imprisonment up to one year and with a fine up to 5,000 marks, or with one of these penalties.

If the incorrect statements specified in paragraph 1 were made in a business establishment by an employee or representative, then the proprietor or manager of the concern is punishable besides the employee or representative, if the action happened with his knowledge.

SEC. 5. The use of names which in business dealings serve to specify certain goods or industrial services, without intending to specify their provenance, is not included under the provisions of Sections 3 and 4.

In the sense of the provisions of Sections 3 and 4, pictorial presentations and other contrivances which are calculated and adapted to replace such statements are to be regarded in the same way as the specified statements.

SEC. 6. If in public advertisements or in communications intended for an extensive group of persons, the sale of goods is announced, which came from a bankrupt stock, but no longer belong to such bankrupt stock, it is forbidden to make any reference to the origin of the goods from a bankrupt stock.

Violations of this provision will be punished with a fine up to 150 marks or with arrest.

SEC. 7. Whoever in public advertisements or in communications which are intended for an extensive group of persons announces the sale of goods under the designation of a closing out sale is obliged in the announcement to give the reason which has given occasion to the closing out sale.

Through the superior administrative authorities, after

hearing given to the proper legal representatives of industry and trade, regulations may be made for the announcement of certain kinds of closing out sales, to the effect that notices regarding the reason of the closing out sale and the time of its beginning be provided at a place to be designed by them, as well as a list furnished of the goods to be sold out.

The inspection of the list is permitted to every one.

SEC. 8. Whoever in case of the announcement of a closing out sale places goods for sale, which have been procured merely for the purpose of a closing out sale (so-called replenishment of goods), is punished with imprisonment up to one year and with a fine up to 5,000 marks, or with one of these penalties.

SEC. 9. The announcement of a closing out sale within the meaning of Section 7, paragraph 2, and of Section 8, applies also to every other announcement which relates to the sale of goods on account of winding up business, giving up a particular kind of goods, or getting rid of a specific stock of goods from the existing supply.

With respect to season and inventory sales, which in the announcement are specified as such and are customary in regular business, the provisions of Sections 7 and 8 have no application. Concerning the number, time, and duration of the customary season and inventory sales, the superior administrative authorities may make regulations after hearing the proper legal representatives of industry and trade.

SEC. 10. With fines up to 150 marks or with arrest is punished—

(1) Whoever, contrary to the provisions of Section 7, paragraph 1, neglects, in the announcement of a closing out sale, to give the reason which has given occasion to the closing out sale:

(2) Whoever violates the regulations issued on the basis

of Section 7, paragraph 2, or in complying with these regulations makes incorrect statements;

(3) Whoever violates the regulations provided by the superior administrative authorities on the basis of Section 9, paragraph 2, and sentence 2.

SEC. 11. By decision of the Federal Council it may be determined that certain goods in retail trade may be sold or offered for sale only in prescribed units of number, volume, or weight, or with a description upon the article or its covering concerning the number, measure, weight, place of production, or place of origin of the article.

For the retail trade in beer in bottles or jugs, the description of the content can be prescribed with provision of suitable limits of toleration for error.

The regulations prescribed by the Federal Council are to be published in the Imperial Gazette and laid before the Imperial Diet immediately or at its next meeting.

Conduct contrary to the regulations of the Federal Council is punished with a fine up to 150 marks or with arrest.

SEC. 12. Whoever in business dealings for the purpose of competition offers, promises, or grants presents or other advantages to the employee or representative of a business, in order to obtain through improper conduct of the employee or representative an advantage for himself or a third person in the supply of goods or industrial services, is punished with imprisonment up to one year and with fine up to 5,000 marks or with one of these penalties, unless a heavier penalty is incurred under other legal provisions.

The same punishment applies to an employee or representative of a business establishment who in business dealings demands, allows to be promised, or accepts presents or other advantages in order that he through improper conduct may give another a preference in the supply of goods or industrial services.

In the judgment, the thing received or its value is to be declared forfeited to the state.

SEC. 13. In the cases of Sections 1 and 3 the action to desist can be brought by every manufacturer who produces goods or services of a like or related kind, or handles them in trade, or by associations for the promotion of industrial interests, in so far as the associations as such can sue in civil litigation. These manufacturers and associations can also bring an action to desist against those who violate Sections 6, 8, 10, 11, and 12.

For compensation of the damage arising from the violation is responsible:

(1) Whoever in case of Section 3 knew or should have known the incorrectness of the statements made by him. Against editors, publishers, printers, or distributors of printed periodicals, the claim for compensation of damage can be made effective only if they knew the incorrectness of the statements.

(2) Whoever intentionally or negligently violates Sections 6, 8, 10, 11, and 12.

If acts which are not permitted according to Sections 1, 3, 6, 8, 10, 11, and 12, are committed in a business establishment by an employee or representative, the action to desist therefrom may also be brought against the owner of the establishment.

SEC. 14. Whoever for the purpose of competition asserts or circulates facts concerning the business of another, concerning the personality of the owner or manager of the business, concerning the goods or industrial services of another, which are adapted to injure the operation of the business or the credit of the owner, is bound, in so far as the facts are not demonstrably true, to make compensation for the damage arising therefrom. The injured party may also demand that the assertion or circulation of the facts cease.

If it relates to confidential communications and if the communicant or the recipient of the communication has a rightful interest therein, then the action to desist is only permissible when the facts are asserted or circulated contrary to the truth. The claim for compensation of damages can be made only if the communicant knew or should know the incorrectness of the facts.

The provisions of Section 13, paragraph 3, have corresponding application.

SEC. 15. Whoever against better knowledge asserts or circulates facts contrary to the truth concerning the business of another, concerning the personality of the owner or manager of the business, concerning the goods or industrial services of another, which are adapted to injure the operation of the business is punished with imprisonment up to one year and with a fine up to 5,000 marks, or with one of these penalties.

If the facts specified in paragraph 1 are asserted or circulated by an employee or representative in a business establishment, then the owner of the establishment, besides the employee or representative, is punishable, if the act happened with his knowledge.

SEC. 16. Whoever in business dealings uses a name of a person, a firm name, or the special designation of a business establishment, of an industrial undertaking or of printed matter in a manner which is adapted to produce confusion with the name, firm name, or special designation, which another properly uses, may be made subject by the latter to an action to desist from such use.

The user is bound to compensate the injured party for damages if he knew or ought to know that the improper kind of use was adapted to produce confusion.

Equivalent to the special designation of a business establishment are such business insignia and other distinctive

fittings for distinguishing the establishment from other establishments, which are used within the business circles affected as marks of distinction of a business establishment. For the protection of trade marks and the dress of goods (Sections 1 and 15 of the Law for the Protection of Trade Marks of May 12, 1894, *Imperial Gazette*, p. 441), these provisions have no application.

The provisions of Section 13, paragraph 3, have corresponding application.

SEC. 17. Whoever as employee, laborer, or apprentice of a business establishment, for the purpose of competition or with the intention to do injury to the owner of the business establishment, imparts to others without authority commercial or manufacturing secrets, which are confided to him on account of his employment or otherwise have become accessible to him during the period of employment, is punished with imprisonment up to one year and with a fine up to five thousand marks or with one of these penalties.

Like penalties affect him who, without authority, for the purpose of competition makes a profit from or imparts to another commercial or manufacturing secrets, the knowledge of which he acquired through one of the means of communication specified in paragraph 1, or through his own act, contrary to law or in a manner repugnant to good morals.

SEC. 18. Whoever without authority, for the purpose of competition, makes a profit from or imparts to another plans or rules of a technical character, especially drawings, models, patterns, dress patterns, or recipes, which are confided to him in business dealings, is punished with imprisonment up to one year and with a fine up to five thousand marks or with one of these penalties.

SEC. 19. Acts contrary to the provisions of Sections 17 and 18 obligate furthermore compensation for the injury

arising therefrom. Several obligors are responsible as joint debtors.

SEC. 20. Whoever for the purpose of competition undertakes to induce another to do an act contrary to the provisions of Section 17, paragraph 1, and Section 18, is punished with imprisonment up to nine months and with a fine up to 2,000 marks or with one of these penalties.

SEC. 21. The action to desist or for compensation for injury specified in this law is outlawed within six months from the time in which the person entitled to the action acquires knowledge of the act and of the person liable, and, without regard to this knowledge, within three years from the committing of the act.

For the claims to compensation for injury the period of prescription does not begin before the time in which an injury arose.

SEC. 22. Criminal prosecution takes place, with the exception of the cases specified in Sections 6, 10, and 11, only upon complaint. In the cases of sections 4, 8, and 12 every manufacturer and association specified in Section 13, paragraph 1, has the right to make the complaint.

The withdrawal of the complaint is permissible.

Punishable acts, whose prosecution occurs only upon complaint, can be prosecuted by way of private suit by those qualified to make the complaint, without requiring a previous complaint to the State prosecuting officers. Public complaint is made by the State prosecuting officers only if this is in the public interest.

If prosecution occurs by way of private suit, then the "Schoffen" courts* have jurisdiction.

SEC. 23. If in the cases of Sections 4, 6, 8, and 12, a penalty is adjudged, then it may be ordered that the condemnation be made publicly known at the cost of the culprit.

*Courts of inferior jurisdiction having one professional and two lay judges or assessors.

If in the cases of Section 15 a penalty is adjudged, then the injured party is allowed the right to have the condemnation made publicly known within a definite time at the cost of the condemned person.

Upon the request of the accused who has been acquitted, the Court may order the public announcement of the acquittal; the State treasury bears the cost in so far as the same is not imposed on the accuser or the private complainant.

If upon the basis of one of the provisions of this law an action to desist is brought, then the successful party may be granted in the judgment the right to have the decree part of the judgment made publicly known within a definite period at the cost of the defeated party.

The manner of the announcement is to be determined in the judgment.

SEC. 24. For complaints upon the basis of this law the court in whose district the defendant has his business establishment, or in absence of that, his domicile, has exclusive jurisdiction. For persons who have neither a business establishment nor domicile within the country, the court of the place of sojourn within the country, or when such is not known, the court in the district in which the act occurred, has exclusive jurisdiction.

SEC. 25. For enforcing the actions to desist specified in this law temporary orders may be made, even if the prerequisites specified in Sections 935 and 940 of the Code of Civil Procedure do not apply. The District Court also has jurisdiction within whose district the dealings occurred upon which the action is based; besides the provisions of Section 942 of the Code of Civil Procedure apply.

SEC. 26. Besides a penalty inflicted in accordance with this law, upon demand of the injured party, a money fine, to be paid to him, may be adjudged up to the amount of ten thousand marks. For this fine those condemned thereto

are responsible as joint debtors. An adjudged fine excludes the right to make further claims for compensation for damages.

SEC. 27. Civil suits, in which, by complaint, an action is brought on the basis of this law, in so far as the State courts have original jurisdiction, belong before the chambers for business cases.

In civil suits, in which, by complaint or counter complaint, an action is brought on the basis of this law, the proceedings and decision in the last instance, according to Section 8 of the introductory law to the law for the organization of the courts, are referred to the Imperial Court.

SEC. 28. Whoever does not possess a principal place of business within the country has a claim to the protection of this law only in so far as, in the State in which his principal place of business is found, German manufacturers enjoy a corresponding protection, according to an announcement contained in the *Imperial Gazette*.

SEC. 29. What authorities in each federal State are to be understood under the designation of superior administrative authorities in the meaning of this law is determined by the central authorities of the federal States.

SEC. 30. This law takes effect October 1, 1909.

At that time the Law for Preventing Unfair Competition of May 27, 1896 (*Imperial Gazette*, p. 145), ceases to have force.

Authenticated under our own august signature and affixed imperial seal.

Issued at New Palace, June 7, 1909.

SEAL WILLIAM.

VON BETHMANN-HOLLWEG.

APPENDIX H

SELECTED READING REFERENCES ON TRUSTS

ANNALS OF ACADEMY OF POLITICAL AND SOCIAL SCIENCE. "Industrial Competition and Combination" (1912).

CARTER, GEORGE R. "The Tendency Toward Industrial Combination" (1913).

A study of industrial combinations in Great Britain.

COOK, WILLIAM W. "A Treatise on the Law of Corporations" (7th edition, 1913).

DEWING, A. S. "Corporate Promotion and Reorganizations" (1914).

HANEY, LEWIS H. "Business Organization and Combination" (1913).

HARVEY, R. S. AND BRADFORD, E. W. "A Manual of the Federal Trade Commission" (1916).

Treats origin, development, and construction of anti-trust laws of the United States—with selected Decisions, Rules of Practice, Forms, etc.

LEVY, H. "Monopoly and Competition" (1911).

A study of conditions in Great Britain.

MACROSTY, H. W. "The Trust Movement in British Industry" (1907).

MEAD, E. S. "Trust Finance "(1903).

NATIONAL CIVIC FEDERATION. "The Trust Problem" (1912).

A symposium on the Trust situation.

PIERCE, FRANKLIN. "The Tariff and the Trusts" (1907).

STEVENS, W. A.—(ED). "Industrial Combinations and Trusts" (1913).

Useful collection of documentary and other material

illustrative of the development of Trusts and of the control of Trusts.

TAFT, W. H. "The Anti-Trust Act and the Supreme Court" (1914).

TARBELL, IDA M. "The History of the Standard Oil Company" (1904).

THORNTON, W. W. "A Treatise on the Sherman Anti-Trust Act" (1913).

Covers history and interpretation of the Sherman Act. Has table of nearly 1,200 case citations in State and Federal Courts.

VAN HISE, C. R. "Concentration and Control" (1912).

WYMAN, B. "The Control of the Market" (1911).

UNITED STATES GOVERNMENT PUBLICATIONS:

"Federal Anti-Trust Decisions" (4 vols.) (1912).

Contains Circuit, District, and Supreme Court decisions in Federal Anti-Trust cases from 1890 to 1912. In some cases gives excerpts from briefs for the government or the corporations.

"The Federal Anti-Trust Laws with Amendments" (1916).

Contains full text of all Federal Anti-Trust Laws, together with a list of all cases instituted thereunder by the United States and citations of these cases. Last edition, July 1, 1916.

"Laws on Trusts and Monopolies Domestic and Foreign" (1914).

Compiled by Nathan B. Williams for the use of the Committee on the Judiciary, House of Representatives. Contains text of all Federal and of all State Anti-Trust laws, with selected case citations thereunder and texts of Anti-Trust laws of the following nations: Australia, Canada, Cape of Good Hope, Great Britain (with abstract and citation of selected British cases from 1415 to 1894), Japan and New Zealand.

"Trust Laws and Unfair Competition" (1915).
Compiled by the Bureau of Corporations of the Department of Commerce and gives in full laws regarding Trusts and unfair competition in force in the U. S., in various states, and in foreign countries. A complete source book.

REPORTS OF THE ATTORNEY-GENERAL OF THE UNITED STATES AND GOVERNMENT BRIEFS OF LEADING TRUST CASES

"Reports of the Bureau of Corporations—1904 to present."
Especially the special reports of investigations of particular industries—the Beef Industry (1905), the Petroleum Industry (1906, 1907), the Tobacco Industry (1909, 1911, and 1915), the Steel Industry (1911, 1912, and 1913), the Lumber Industry (1913 and 1914) and the International Harvester Company (1913).

"Reports of the Federal Trade Commission"—1915 to present.
This Commission has already published several special reports: Coöperation on American Trade (2 vols.), Trade and Tariffs in South America, Pipe Line Transportation of Petroleum, the Fertilizer Industry, Gasoline Prices, the Beet Sugar Industry, and Mexican Sisal Hemp. It is now making general investigations of the Petroleum Industry, the Anthracite Coal Industry, the Bituminous Coal Industry, and the Paper Industry.

"Reports of the Industrial Commission"—1900-1902.
Vols. I, II, XIII, XVIII, and XIX deal with Trusts.

For current facts about industrial combinations consult the Annual Volumes of either *Moody's* or *Poor's Manuals on Industrials.*

For an exhaustive bibliography on Trusts up to 1907, consult the U. S. Library of Congress—*A list of books relating to trusts* (with references to periodicals) by A. P. C. Griffin—3d edition, 1907.

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